SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
JAN 19 1972
E. ROBERT SEAVER, CLE

APPENDIX

SUPREME COURT OF THE UNITED STATES

TERM, 1971

No. 71-257

T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE,
Petitioner,

vs.

GENERAL ELECTRIC CREDIT CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petition for Certiorari filed August 20, 1971.
Certiorari granted December 7, 1971.

E. L. Mitchell, Inc., 926 Cherry Street, Kansas City, Mo. 64106, 421-2020

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION,

Plaintiff,

vs.

T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,

Defendant.

Civil Action No. 1273

DOCKET ENTRIES

Proceedings

Date	
2–20–68	Filed Petition for Removal by United States under Ti. 28, Sec. 2410(a).
2–20–68	Filed Notice of Removal (copy)
2–20–68	Filed Letters from Mr. Johnson, Attorney for Plaintiff and Mr. Cornelius, Attorney for Defendant, waiving Removal Bond
2–23–68	Received from Marion Co., Texas, District Clerk, Mrs. Nettie Mae Lemmon, the following complete file: Original Petition & Citations Defendant's First Original Answer Defendant's Application for Condemnation Defendant's First Amended Answer and Cross-Action Original Answer of General Electric Co. to Cross-Action

Original Answer of Cross-Defendant, General Electric Credit Corp. to Cross-Plaintiff's Cross-Action

Defendant's Second Amended Answer and Cross-Action

Defendant's Third Amended Answer and Cross-Action

3–22–68 Filed Third Party Defendant, United States of America, Answer and Cross-Action

4–9–68 Filed Motion of Plaintiff General Electric Credit Corp. in Reply to Answer and Cross-Action of U. S. A.

4–15–68 Filed Motion of General Electric Company to Dismiss or for more definite statement

4–24–68 Filed Memorandum of United States in Opposition to the Motion of General Electric Company to Dismiss

4–24–68 Filed Memorandum of the United States in Opposition to the Motion of General Electric Credit Corporation to Dismiss

4–24–68 Filed Answer of T. R. Grubbs to Motion of General Electric Credit Corporation to Dismiss

5–7–68 Filed Memorandum Brief of General Electric Co. in support of Motion to Dismiss or for more definite statement

5–20–68 Filed Motion of U. S. (Third Party Deft. & Cross-Pltf.) to Amend Answer and Cross-Action

6–12–68 Filed Joint Motion for Continuance

6–13–68 Filed Order Granting Continuance—Judge Joe J. Fisher—COB V. 14, P. 76

6-20-68 Filed Order Granting General Electric Credit Corp's. Motion to Add Parties Defendant (Mo. filed 4-9-68)—Judge Joe J. Fisher—COB V. 14, P. 86 (U. S. to Amend & serve copies within 15 days) (Also De

6-20-68 Filed Order Denying Motions to Dismiss Cross-Action of U. S.—Judge Joe J. Fisher—COB V. 14, P. 87

6-20-68 Filed Order Granting U. S., Third Party Deft. & Cross-Pltf., Leave to Amend—Judge Joe J. Fisher—COB V. 14, P. 88

7-1-68 Filed Original Answer of General Electric Credit Corp. to the Amended Answer and Cross-Action of the United States

7-3-68 Filed Original Answer of General Electric Company to the Amended Answer and Cross-Action of the United States

**6-20-68 Filed Amended Answer and Cross-Action of the United States

7-9-68 Filed Defendant's Third Amended Answer and Cross-Action (To be served by Summons when addresses received)

8-23-68 Filed Motion of Cullum & Boren Co. to Intervene (Thos. L. Lewis, 503 Davis Bldg., Dallas, Texas—Atty.)

9-3-68 Filed Motion of EAC Credit Corporation to Intervene (J. W. Falvey, Jr., P. O. Box 1142, Longview, Texas—Atty.)

9-13-68 Filed Motion of Goodyear Tire & Rubber Co. to Intervene (B. A. Britt, J 406 Texas Blvd., Texarkana, Texas—Atty)

10–17–68	Filed Order Granting Intervention of Cullum & Boren Co.—Judge Joe J. Fisher—COB V. 14, P. 187
10–17–68	Filed Intervention of Cullum & Boren Co.
10–17–68	Filed Order Granting Intervention of EAC Credit Corporation—Judge Joe J. Fisher—COB V. 14, P. 188
10–17–68	Filed Order Granting Intervention of Goodyear Tire & Rubber Co.—Judge Joe J. Fisher—COB V. 14, P. 189
10–17–68	Filed Intervention of Goodyear Tire & Rubber Co.
11–18–68	Filed Intervention of EAC Credit Corporation
3–6–69	Filed Motion of T. R. Grubbs, Defendant, & Cross-Plaintiff, for Production, Inspection & Copying of Documents, Books, Papers and Instruments
3–6–69	Filed Interrogatories of T. R. Grubbs, Defendant and Cross-Plaintiff, Propounded to General Electric Corp. & General Electric Credit Corp.
4–30–69	Filed Order Granting Motion of T. R. Grubbs, Cross-Plaintiff, to Inspect and Copy Documents Within 30 Days—Judge Joe J. Fisher—COB V. 15, P. 110
6–11–69	Filed Answers of General Electric Co. to Interrogatories Propounded by T. R. Grubbs
10–17–69	Filed Defendant General Electric Company's Amended Answer to the Cross-Action of T. R. Grubbs d/b/a T. R. Grubbs Tire & Appliance.
10–20–69	Filed Cross-Defendant General Electric Credit Corporation's Amended Answer to the Cross-Action of T. R. Grubbs d/b/a T. R. Grubbs Tire & Appliance.

10–28–69	In Open Court, before Judge Fisher, in Texarkana, Texas, Trial Begins, 9:00 A.M. 5:20 P.M. —Trial Recessed until 9:00 A.M., October 29, 1969.
10–28–69	Filed Pre Trial Order signed by Judge Fisher. Counsel Present. V. 16, P. 1 - - -
10–29–69	9:00 A.M.—Trial in Second Day. Defendant General Electric Co. Makes Oral Motion for Judgment—Motion Overruled. 3:15 P.M.—Trial Ends. Case taken under Advisement. Memorandum Briefs to be filed in Texarkana by December 12, 1969, unless Some Party asks for additional time, then extension will apply to all parties. Reply Briefs (if desired) to be filed by January 9, 1970, unless extension granted.
12–10–69	Filed MEMORANDUM BRIEF on Behalf of T. R. Grubbs.
12–11–69	Complete file mailed to Beaumont for Judge Fisher
12–12–69	Filed Plaintiff's ORIGINAL BRIEF (mailed to Beaumont)
12–12–69	Filed BRIEF of the Defendnat, General Electric Company (Deft.?)
12–22–69	Filed Defendant's BRIEF IN REPLY TO BRIEF OF GENERAL ELECTRIC CO.
12–22–69	Filed Defendant's BRIEF IN REPLY TO BRIEF OF GENERAL ELECTRIC CREDIT
1–12–70	Filed REPLY BRIEF OF THE DEFENDANT, General Electric Co. (Deft.?)
1–12–70	Filed REPLY BRIEF OF THE PLAINTIFF, General Electric Credit Corp.

3–20–70 Filed MEMORANDUM OPINION WITH FINDS OF FACT AND CONCLUSIONS OF LAW—Judge Joe J. Fisher—COB V. 16, P. 292. Mailed Certified Copies to all attorneys and instructed counsel for Cross-Plaintiff to submit appropriate judgment within 15 days.

4–10–70 Filed JUDGMENT—Judge Joe J. Fisher—COB V. 16, P. 301.—T. R. Grubbs to recover from General Electric Credit Corp. $20,000.00 with 6% int. from this date. T. R. Grubbs' note to General Electric Credit Corp. in the amount of $66,923.47 is cancelled. T. R. Grubbs to recover nothing from General Electris Co. and USA to recover nothing from General Electric Co. or General Electric Credit Corp. General Elecri Credit Corp. to recover nothing from T. R. Grubbs, et al.

5–7–70 Filed NOTICE OF APPEAL by General Electric Credit Corp.

Copies of Notice mailed to Fifth Circuit and to all attorneys of record.

Receipt #37530 in the amount of $5.00 for Filing Appeal.

5–8–70 Filed SUPERSEDEAS BOND in the sum of $24,000.00 with Federal Ins. Co. as Surety.

6–12–70 Mailed complete file with exhibits, court reporter's transcript, cover page, index & Clerk's Certificate to the Fifth Circuit Court of Appeals. Notified them at Mr. Bloxom's request to send the file to him for printing. Notified all attorneys.

6-25-71 Received for the Fifth Circuit Court of Appeals: JUDGMENT (dated 6-2-71) Issued as Mandate 6-24-71.

Remanded to District Court, Costs to be divided between Pltf. & Deft.

OPINION—Remanded to District Court with instructions that the case be remanded to the State Court for appropriate disposition.

APPENDIX—Two Vols.

LETTER—Original File was destroyed by fire. The attorneys are to help reconstruct record if necessary. (See Bench Docket for details).

7-9-71 Received from the Fifth Circuit Court of Appeals: THE ORIGINAL EXHIBITS and BILL OF COSTS approved by Fifth Circuit.

IN THE DISTRICT COURT OF MARION COUNTY, TEXAS

GENERAL ELECTRIC CREDIT CORPORATION

vs.

T R. GRUBBS, DBA T. R. GRUBBS TIRE & APPLIANCE

PLAINTIFF'S FIRST ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now General Electric Credit Corporation, a New York Corporation, organized under the laws of the State of New York and doing business in the State of Texas out of its office in the State of Louisiana at 624 Travis Street, Shreveport, Louisiana, hereinafter called Plaintiff, complaining of T. R. Grubbs, dba T. R. Grubbs Tire & Appliance, hereinafter called Defendant who resides in Marion County, Texas, and for cause of action would show the Court as follows:

I.

That Plaintiff is a Corporation with its domicile in Shreveport, Caddo Parish, Louisiana, and is engaged in interstate commerce and that Defendant is a resident of Jefferson, Marion County, Texas.

That on or about March 12, 1964, Defendant executed and delivered to Plaintiff his promissory note, bearing date on such day and year, and thereby promised to pay Plaintiff, or its order, in monthly installments of Fifteen Hundred and No/100 Dollars ($1500.00) each, the first installment being due and payable on or about April 11, 1964, and a like installment due on or before the 11th day of each month thereafter, until said note in the amount of Sixty Six Thousand Nine Hundred Twenty-Three and 47/100 Dollars ($66,923.47) is paid in full, with No (0) interest from April 11, 1964 and ten per cent (10%) attorney's fees upon principal and interest, if placed in the hands of an attorney for collection or collected by suit, a copy of such note is attached hereto marked Exhibit "A" and made a part hereof to which reference is here made. That Defendant has paid the sum of One Thousand Five Hundred and No/100 ($1500.00) on said note and is entitled to credit therefor; that Defendant owes a balance of Sixty Five Thousand Four Hundred Twenty Three and 47/100 Dollars ($65,423.47), on said note and has been given credit for all just and due offsets and credits due on said note.

III.

Plaintiff, being from such date to the present date the legal owner and holder of such note, on or about the 11th day of June, 1964, after such note was due and payable, made demand of Defendant to pay the same, and Defendant, refusing, placed such note after maturity in the hands of the undersigned attorney for collection, agreeing with

him to pay him the sum of Six Thousand Five Hundred Forty-Two and 35/100 Dollars ($6,542.35) attorney's fees for his services in connection with such note, which is a reasonable amount therefor.

IV.

Though repeated demands have been made by Plaintiff upon Defendant to pay such note, and attorney's fees, the Defendant has failed and refused, and still fails and refuses to pay the same or any part thereof, to Plaintiff's damage in the sum of Sixty Five Thousand Four Hundred Twenty Three and 47/100 Dollars ($65,423.47), and Six Thousand Five Hundred Forty-Two and 35/100 Dollars ($6,542.35) attorney's fees.

V.

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited to appear herein, and that on final hearing hereof, they have judgment in the amount of Sixty Five Thousand Four Hundred Twenty Three and 47/100 Dollars ($65,423.47), together with Six Thousand Five Hundred Forty-Two and 35/100 Dollars ($6,542.35) attorney's fees, for cost of suit, and for general relief.

Baldwin & Curry
By: /s/ Doyle Curry
Attorney for Plaintiff

Baldwin & Curry
Attorneys At Law
Mahon Building
Marshall, Texas

(Title Omitted)

NO. 17,791

DEFENDANT'S THIRD AMENDED ANSWER AND CROSS-ACTION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, T. R. Grubbs, doing business as T. R. Grubbs Tire and Appliance, Defendant in the above entitled and numbered cause, and files this his Third Amended Original Answer and Cross-Action, and for such would show the Court as follows:

I.

This Defendant denies each and every allegation set out in Plaintiff's Petition, and demands strict proof thereof.

II.

This Defendant would show the Court that there was a total failure of consideration for the execution of the note herein and upon by virtue of the facts hereinafter shown.

III.

On or about March 7, 1964, Plaintiffs then field representative H. C. Jones, requested this Defendant to meet with him and other officers of the Plaintiff at Shreveport, Louisiana, and advised Defendant that the Plaintiff's representatives wanted to go over all of his accounts in order to determine which of said accounts were in their opinion uncollectable; that in the event they found any of said accounts which they believed to be uncollectable, these would be returned to this Defendant and he could execute his note to Plaintiff in lieu of such accounts and that the accounts rejected by them would be owned by the Defendant and would be exclusively his to collect and

the money retained by him and used by him as he saw fit, or paid on the note to be executed.

IV.

Pursuant to such request this Defendant went to Shreveport on or about March 9, 1964, and met with Plaintiff's representatives, namely, H. C. Jones, Field Representative, Jim Newal, Field Representative, Howard Cole, acting Branch Manager and Frank Robinson, Assistant Regional Manager of New Orleans, Louisiana.

V.

This Defendant would show the Court that after going over Defendant's accounts, Plaintiff's representatives above named, found accounts which they claimed to be uncollectable in the amount of $66,923.47. Plaintiff's representatives then stated and agreed that if this Defendant would execute the note herein sued on, they would return these accounts to him and he could collect or renew them, and such sums so collected would belong to him to be used as he might see fit. They further agreed that the Plaintiff would continue to finance all new accounts sent it by this Defendant provided that the credit of such parties were approved and the proceeds of such financing would be paid to Defendant for use according to his discretion, thus enabling the Defendant to make the payments of the note sued upon and to pay for additional merchandise and have additional capital on which to operate.

VI.

This Defendant would show the Court that all of such representation and agreements were falsely and fraudulently made in order to induce this Defendant to execute said note, and to eventually put him out of business; that this Defendant made the first payment of $1,500.00 as pro-

vided in said note and soon thereafter sent the Plaintiff new accounts to be financed, representing approximately the sum of $2,600.00. Plaintiff first refused to accept these accounts, but after this Defendant procured credit ratings showing that the credit of persons owing such accounts to be good, Plaintiff then accepted them, but refused to send him the money. Instead, the Plaintiff, disregarding its agreement, retained the $2,600.00 and purported to credit it to Defendant's reserve account, thus preventing Defendant from using said money to make the payments on said note and to purchase new merchandise, and in fact forcing Defendant to miss the next ensuing note payment. The Plaintiff at such time advised this Defendant that it would not finance any more of his accounts.

VII.

This Defendant would further show the Court that Plaintiff in violation of its agreements and representations, failed and refused to assign the chattel mortgages securing the $66,923.47 worth of accounts, included in the note, thus preventing him from foreclosing on any of the accounts that refused to pay; that Plaintiff thereafter began to foreclose on numerous accounts of this Defendant and without regard to its agreement to let this Defendant collect the accounts for which the note was executed, began and did foreclose numerous of these accounts, taking merchandise which was covered by its agreement above set out; that Plaintiff sent out letters to all of Defendant's customers (Including the ones whose accounts had been returned to him), advising them not to make any further payments of any kind to this Defendant.

VIII.

Defendant would show the Court that many of his customers would carry two accounts with him in his business, one on merchandise sold by General Electric Company and financed by the Plaintiff General Electric Credit Corporation; the other financed by this Defendant. Most of these customers could not or did not realize that they owed two separate accounts; that Plaintiff, after refusing to finance Defendant's accounts, mailed out letters to all of his customers, including those whose accounts had been returned to and now belonged to Defendant, advising them to make no further payments to this Defendant. As a result of these letters, the Defendant's customers have refused to pay him the accounts carried by him as well as those financed by Plaintiff.

IX.

Defendant would further show the Court that in Plaintiff's scheme to bankrupt this Defendant, it refused to extend him further credit, and came and repossessed all of the merchandise which it had financed and which had not been sold; that it also notified the General Electric Company that it would no longer finance merchandise it might sell to Defendant and requested the General Electric Company to refuse to sell Defendant any more merchandise, which it did.

X.

Defendant would show the Court that Plaintiff has repudiated all of its agreements, made to induce him to execute the note herein sued on, and by its unlawful acts and conduct has put Defendant in a position where he could not pay said note; that the consideration therefore has totally failed. The execution and delivery of the note

by Defendant Grubbs was conditioned upon the Plaintiff's performance of its agreements and the truth of its representations, and said agreements and representations being untrue and not followed, said note is of no force and effect.

Respectfully submitted,

Cornelius & Cornelius
By: /s/ J. R. Cornelius
J. R. Cornelius
Attorneys for Defendant

(Title Omitted)

CROSS-ACTION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now T. R. Grubbs, dba T. R. Grubbs Appliance, Cross-Plaintiff herein, and with leave of the Court, files this his First Amended Cross-Action, and complaining of General Electric Company, hereinafter called Defendant, and General Electric Credit Corporation, and the United States of America, hereinafter called Cross-Defendant, and for cause of action would show the Court as follows:

I.

All of the allegations and facts set out in the preceeding third amended original answer of the Defendant Grubbs, particularly those setting out the fraudulent and tortuous conduct of the Plaintiff, General Electric Corporation, are referred to and incorporated herein by refer-

ence and made a part hereof as fully as if copied verbatim in this paragraph.

II.

This Cross-Plaintiff would show the Court that the acts and conduct of the Cross-Defendant General Electric Credit Corporation, which were later joined in by the Defendant General Electric Company, constituted the beginning of an unlawful and fraudulent scheme and conspiracy to be pursued by the General Electric Company and the General Electric Credit Corporation, in putting the Defendant and Cross-Plaintiff out of business, and to destroy his reputation and good will that such conduct and those acts hereinafter shown did result in the total destruction of his business:

III.

The Cross-Plaintiff would show the Court that after General Electric Credit Corporation fraudulently put the Cross-Plaintiff T. R. Grubbs, at its mercy as is shown in the preceding answer, and after breaking its agreements with him and setting out to destroy his business, it refused to extend him further credit, and induced and procured the agreement of General Electric Company joined in the conspiracy by refusing to sell to him, and in order to further said conspiracy, the Defendant General Electric Company withdrew its franchise from this Cross-Plaintiff and gave it to another merchant in Jefferson. These acts not only prevented him from selling the merchandise of the Defendant General Electric Company, but destroyed his credit with all other firms who sold him merchandise

and put him in a position where he could not recoup his losses.

IV.

Cross-Plaintiff would show the Court that during the months of October, November, and December of 1964, General Electric Credit Corporation sent several of its representatives into his trade territory to check the accounts of his customers, and to repossess the merchandise from those who were delinquent in their payments; that among these were Jim Newal, its Field Representative, Ken McMicheal, Billy Haynes, and others whose names are unknown to Cross-Plaintiff. These representatives, while acting for Cross-Defendant in the scope of their employment told Cross-Plaintiffs' customers not to make any further payment to Mr. Grubbs; that he was keeping their money and not sending the payments to the General Electric Credit Corporation; that he had charged to them and mortgaged to General Electric Credit Corporation items of merchandise that they did not purchase. These and many other false, malicious, and slanderous accusations were made by General Electric Credit Corporation's representatives while in the scope of their employment, and with the knowledge of their branch and General Managers.

V.

Cross-Plaintiff would further show the Court that after General Electric Credit Corporation had repossessed a large quantity of merchandise from Cross-Plaintiff's customers, it stored them in a large warehouse in Jefferson and prepared to sell it without notice to this Cross-Plaintiff, even though he had endorsed the notes for such

merchandise, and would be liable for any deficiency which might occur in case the merchandise sold for less than the debt; that when Cross-Plaintiff discovered this scheme of General Electric Credit Corporation and General Electric Company, he had his attorneys demand that he be informed of the amount of the bids and to be permitted to procure some other persons who would pay for said merchandise and thereby lessen his liability. Cross-Defendant finally agreed that he could have this right on that lot of merchandise. Thereafter however, General Electric Credit Corporation again engaged in such a scheme and refused to let him know when or where such merchandise was to be sold or the persons buying the same or the price for which it was sold. This was done to create a greater deficiency and liability on this Cross-Plaintiff, and were fraudulently designed to further the purpose of General Electric Credit Corporation and General Electric Company to destroy Cross-Plaintiff's business.

VI.

Cross-Plaintiff would further show that General Electric Credit Corporation not only repossessed merchandise from some of his customers who were paying their accounts and would have continued to pay if properly handled, but they also repossessed the merchandise from many of the customers whose accounts had been returned to and were owned by Cross-Plaintiff Grubbs, and for which he had executed the note herein sued on. Therefore, repossession of such merchandise was unlawful and without any justification and amounted to a deliberate conversion of Cross-Plaintiff's property and the destruction of his collateral security. In addition to this,

they made settlement agreements with others and accepted less than full payment in full satisfaction of all the accounts of such customers, some of which accounts belonged exclusively to this Cross-Plaintiff, and in which General Electric Credit Corporation had no right whatsoever. The representatives of General Electric Credit Corporation told Cross-Plaintiff's customers that they wanted all merchandise purchased from Mr. Grubbs without any reservations, and thereby, on occasion even acquired property which the Cross-Plaintiff had financed with other companies and was not covered by the mortgage of General Electric Credit Corporation. Also, by not checking the items listed on its mortgage General Electric Credit Corporation failed to procure all of the merchandise listed on many of the mortgages, thus reducing the credit due on the account for which this Cross-Plaintiff was contingently liable, and thereby increasing his liability.

VII.

The Defendant General Electric Credit Corporation and Cross-Defendant General Electric Company, through their agents and representatives, also wrongfully and maliciously told customers of the Cross-Plaintiff Grubbs that he was not treating them fairly and honestly, and that they should take their business to a competitor of the said Grubbs, naming and designating said competitor, who was the merchant to whom said parties gave the General Electric franchise after it had been taken from the said Cross-Plaintiff Grubbs. Many of the good customers of Grubbs believed these false and malicious tales and with-

drew their business from him and stopped paying their just debts to Grubbs.

VIII.

The Cross-Defendant General Electric Credit Corporation and Defendant General Electric Company entered into and followed to completion, an unlawful, fraudulent and malicious conspiracy and agreement in restraint of trade designed and calculated to

A. Force Cross-Plaintiff into default on his note to General Electric Credit Corporation.

B. Deprive him of his lawful credit on foreclosed merchandise.

C. Increase his liability on the accounts financed with General Electric Credit Corporation.

D. Force him into insolvency and destroy his business and good will.

E. Unlawfully convert his property and items on which he had a lien, to their own use.

F. Unlawfully convert to their own use, merchandise which was financed by other companies and mortgaged to them, thus destroying the relationship between Grubbs and said other financing companies and preventing Grubbs from obtaining credit and financing.

G. Deny Grubbs both credit for financing merchandise and also the supply of General Electric appliances, and deliver both to a competitor.

H. By false, malicious and slanderous statements, coupled with the fraudulent and illegal acts above

set out, to destroy the confidence of all those dealing with Grubbs; customers as well as suppliers and financing companies, so that Grubbs could not obtain the money or help to stay in business.

I. By false and slanderous attacks upon Grubbs' honesty, to ruin his reputation.

J. Caused him to be unable to pay his accounts with the suppliers and companies and subjected him to approximately $25,000.00 worth of judgments.

IX.

The wrongful and unlawful acts, combinations and conspiracies perpetrated by the Cross-Defendants and specified herein, were violations of the Anti-Trust Laws of the United States and particularly Title, 15, U.S.C. and particularly sections 1, 2, 3 et seq. and 15 et seq. thereof, as well as violations of the Anti-Trust Laws of the State of Texas and constituted illegal conspiracies, acts and agreements in restraint of trade and to monopolize trade and business in the area served by Cross-Plaintiff and to force Cross-Plaintiff out of business and to destroy his trade and good will, and because of such unlawful acts the Cross-Defendants have become liable to Cross-Plaintiff for treble damage as hereinafter alleged and as authorized by Sec. 15, Title 15, U.S.C.

X.

By reason of the illegal and wrongful conduct of the Cross-Defendants, Cross-Plaintiff has been compelled to employ and engage attorneys to assist him in the protection of his legal rights and the recovery of his rightful remedies and damages, and pursuant to Sec. 15, Title 15,

U.S.C. the Cross-Defendants should be compelled to pay Cross-Plaintiff reasonable attorney's fees. The Cross-Plaintiff has employed the undersigned attorneys to represent him hereinafter specified.

XI.

Cross-Plaintiff would show the Court that because of the acts and conduct of the Cross-Defendant, General Electric Credit Corporation and General Electric Company, including the withdrawal of his credit and cancellation of his Dealers Franchise, and the derogative untrue statements made about him he was unable to pay his creditors. He thereby suffered the following judgments to be taken against him to-wit:

The Lee Hardware Co.	2/15/1966	2/18/1966
vs.		
T. R. Grubbs	$383.93	
General Electric Supply Co.	2/15/1966	2/17/1966
vs.		
T. R. Grubbs	$662.98	
E. A. Credit Co.	2/15/1966	2/17/1966
vs.		
T. R. Grubbs	$387.23	
Southwest Factoring Corp.	2/16/1966	2/15/1966
vs.		
T. R. Grubbs	$334.70	
Higginbotham Pearlstone Hardware	3/21/1966	3/22/1966
vs.		
T. R. Grubbs	$1,116.68	

Carver Chair Co. Inc.	4/20/1966	10/19/1966
vs.		
T. R. Grubbs	$304.60	
Cullum & Boren Co.		10/19/1966
vs.		
T. R. Grubbs	$162.09	
U.S. of America	7/1/1966	7/7/1966
vs.		
Thomas Rayford Grubbs	$6,935.78	
Goodyear Tire & Rubber Co.	12/13/1966	12/16/1966
vs.		
Thomas R. Grubbs	$6,500.00	

Cross-Plaintiff is therefore in jeopardy because of the adverse claims being pressed by the lien claimants and the United States of America, and the said Cross-Plaintiff prays that an application be made determining the priority of the judgment lien claimed by the United States of America so as to avoid double or multiple liability as provided by Rule 22 of the U. S. Rules of Civil Procedure.

XII.

Cross-Plaintiff would show the Court that heretofore on September 15, 1962, he executed his one promissory note to the First State Bank, Hallsville, Texas, in the principal sum of $20,000.00, which said note was thereafter transferred and assigned to Small Business Administration, Marshall, Texas; that said note provided for monthly payments of $380.00 each, including both principal and interest and the balance due of the principal and interest five years from date thereof; this Cross-Plaintiff made all of said payments except a balance of $6,823.30 of the principal thereof; that because the matters hereinabove set out and the unlawful

acts of the Cross-Defendants General Electric Credit Corporation and General Electric Company, he was unable to pay the balance of said note; that thereafter on May 25, 1966, the United States of America filed suit in the United States District Court for the Eastern District of Texas, Marshall Division, in Cause No. 1126 on the docket thereof.

XIII.

Cross-Plaintiff would show the Court that thereafter on June 16, 1966, the United States of America procured a judgment against this Cross-Plaintiff in the sum of $6,935.87 and $42.32 Court cost, together with interest thereon at the rate of 6% per annum from date; that thereafter on July 7, 1966, an abstract of said judgment was filed and recorded in Volume 4 at page 98 of the Abstract Judgment Records of Marion County, Texas.

All of the judgments above mentioned except the judgment in favor of Goodyear Tire and Rubber Co., were dated, filed and recorded prior to the judgment obtained by the United States of America. The United States of America is claiming and maintaining that, even though its judgment was dated and filed subsequent to the others above stated, it is never the less superior to the judgments listed; that in the event he should recover herein and be able to pay said judgments, he would not be able to do so without becoming liable to the other judgment creditors.

XIV.

As a direct result of the unlawful conspiracy, as well as the joint and several torts and wrongs committed by General Electric Credit Corporation and General Electric Company against the Cross-Plaintiff Grubbs, the wrongful purposes of said tortfeasors have been largely realized. His business was destroyed. His ability to purchase and finance

merchandise has been severely damaged. His reputation and good will have been seriously and irreparably damaged, and he was denied the opportunity to recoup his losses and pay his obligations. Because of these injuries, Cross-Plaintiff has been actually damaged in the sum of $150,000.00 for the destruction of his business. Because of the vicious, fraudulent and malicious torts of the General Electric Credit Corporation and General Electric Company, and their illegal conspiracy to destroy Cross-Plaintiff's business, they are liable under the Federal Statutes as well as the Texas Statutes, to treble damages in the sum of $450,000.00 for which Cross-Plaintiff respectfully prays.

A. He has been actually damaged in the sum of $50,000.00 for damage to his reputation and good will and standing in the community. In addition, and in the alternative and the event that Cross-Plaintiff be mistaken in saying that he is entitled to treble damages for the conspiracy engaged in by the Defendant and the Cross-Defendant, then Cross-Plaintiff says that in addition to the actual damages of $150,000.00 for loss of his business and $50,000.00 for damages to his reputation, the Cross-Plaintiff is entitled to exemplary and punitive damages in the sum of $450,000.00 for which he prays.

WHEREFORE, PREMISES CONSIDERED, Cross-Plaintiff prays that General Electric Company be cited to appear and answer herein and that the United States be cited by service upon the Hon. Ramsey Clark, U. S. ATTORNEY GENERAL, and upon Hon. Wayne Justice, U. S. Attorney, Tyler, Texas, for the Eastern District of Texas, and that on final hearing hereof, Cross-Plaintiff have judgment against General Electric Credit Corporation and General Electric Company jointly and severally, for cancellation of the note sued on, and for actual and treble damages as above set out and for exemplary damages and for attorney's fees and Court costs and deterioration as to

priority of liens and for such other and further relief as he may show himself to be entitled.

Respectfully submitted,

Cornelius & Cornelius
By /s/ J. R. Cornelius
J. R. Cornelius
Attorneys for Defendant and Cross-Plaintiff.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION, Plaintiff, vs. T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE, Defendant.	Civil Action No. 1273

NOTICE OF FILING PETITION FOR REMOVAL

(Filed February 2, 1968)

TO: Mrs. Nettie Mae Lemmon, Clerk of the 7th. Judicial District Court of Marion County, Texas:

NOTICE IS HEREBY GIVEN, pursuant to the Acts of Congress in such cases made and provided, that the Defendant, UNITED STATES OF AMERICA, in Case No. 17,791 on the Docket of the 76th. Judicial District Court of Marion County, Texas, styled GENERAL ELECTRIC CREDIT CORPORATION Vs. T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE COMPANY, has filed its

Petition for Removal of said cause to the United States District Court, Eastern District of Texas, Marshall Division, and herewith tenders for filing in the 76th. Judicial District Court of Marion County, Texas, a copy of the Petition for Removal heretofore filed in the United States District Court. Said Petition is filed without bond in accordance with the provisions of Section 1446(b), Title 28, United States Code.

By a copy of this Notice and a copy of the Petition, we are hereby notifying Cornelius & Cornelius, Attorneys at Law, 123 North Polk, Jefferson, Texas, attorneys for Defendant and Cross Plaintiff, and Mr. Hubert D. Johnson, Attorney at Law, 1900 Mercantile Dallas Building, Dallas, Texas, Attorney for General Electric Credit Corporation, Plaintiff herein, and Mr. Morris Harrell, Attorney at Law, 4200 Republic National Bank, Dallas, Texas, Attorney for General Electric Company, that said Petition has been filed and that you are hereby requested to forward all papers and matters in this cause of action to the Clerk of the United States District Court, Eastern District of Texas, Marshall Division, Marshall, Texas, with your certificate of transcript of the State Court proceedings.

Wm. Wayne Justice
United States Attorney
By: /s/ Carl Roth
Carl Roth
Assistant U. S. Attorney

PETITION FOR REMOVAL

(Filed February 20, 1968)

TO THE HONORABLE JUDGE OF SAID COURT:

THE UNITED STATES OF AMERICA, on behalf of its agency and instrumentality, THE SMALL BUSINESS ADMINISTRATION, acting by and through its Attorney, Wm. Wayne Justice, United States Attorney for the Eastern District of Texas, would respectfully show as follows:

I.

The above entitled suit was instituted in the 76th Judicial District Court in and for Marion County, Texas, and is now pending therein.

II.

By reason of the Third Amended Answer and Cross Action filed by the Defendant, T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE, it is sought to have a determination by the State District Court that the judgment lien claimed by the United States as a result of the Judgment in the amount of Six Thousand Nine Hundred Thirty Five and 78/100 ($6,935.78) Dollars in the case of The United States of America Vs. Thomas Rayford Grubbs, Civil No. 1126, Marshall Division, is junior to and must take a lesser priority to the adverse claims being pressed by certain other lien claimants against the Defendant Grubbs.

III.

A claim in the nature of a suit requesting the determination of the priority of liens against property in which the United States asserts an interest is cognizable under Section 2410(a), Title 28, United States Code, and thus said action is one in which the District Courts of the United States are given original jurisdiction.

IV.

The Amended Pleading by which the United States became a party Defendant in the above captioned suit was served upon the United States Attorney on January 19, 1968. Attached hereto are copies of the Defendant Grubbs' Third Amended Answer and Cross Action setting forth the claim for relief upon which said action is based with regard to the Defendant, United States of America.

WHEREFORE, the Petitioner, UNITED STATES OF AMERICA, prays that said action be removed from the State Court into this Court for trial and determination upon the merits of all issues or claims therein, as is provided by Title 28, Section 1444, 1441(c) and 1446.

Respectfully submitted,

Wm. Wayne Justice
United States Attorney
By: Carl Roth
Assistant U. S. Attorney

THE STATE OF TEXAS)
)
COUNTY OF JEFFERSON)

CARL ROTH, being first duly sworn, deposes and says: That he is an Assistant United States Attorney and as such is authorized to make this verification on behalf of Petitioner, United States of America; that affiant has read the foregoing petition and knows the contents thereof, and the same are true of his own knowledge except the allegations therein made upon information and belief, and as to such allegations affiant believes it to be true.

Carl Roth

SUBSCRIBED AND SWORN TO BEFORE ME, this the ..... day of February, 1968.

.....

Notary Public in and for the County of Jefferson, State of Texas.

My Commission Expires June 1, 1969.

(Certificate of Service omitted in printing)

(Certificate of Authentication omitted in printing)

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION,

Plaintiff,

vs.

T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE,

Defendant.

Civil Action No. 1273

THIRD PARTY DEFENDANT'S, UNITED STATES OF AMERICA, ANSWER AND CROSS ACTION

(Filed March 22, 1968)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW THE UNITED STATES OF AMERICA, acting by and through its Attorney, WM. WAYNE JUSTICE, United States Attorney for the Eastern District of Texas, and files this its Answer to the Defendant's, T. R. GRUBBS, Cross Action, and would respectfully show the Court as follows:

I.

The Third Party Defendant, UNITED STATES OF AMERICA, denies generally each and every allegation of the Defendant's, T. R. GRUBBS, Cross Action in this case.

II.

The Third Party Defendant, UNITED STATES OF AMERICA, specifically denies that any party to this action has any lien or claim superior or paramount to that of this Third Party Defendant.

III.

The Third Party Defendant, UNITED STATES OF AMERICA, alleges and contends and would show the Court that it has a prior and superior claim against any and all assets or property presently in the possession of T. R. GRUBBS, or which he might acquire in the future, by virtue of the Judgment in favor of the United States of America against said T. R. GRUBBS in Civil Action No. 1126, Marshall Division, United States District Court for The Eastern District of Texas; said Judgment was obtained June 16, 1966, in the amount of $6,935.87, plus interest thereon at the rate of 6% per annum from the date of Judgment until paid, in addition to Court Costs in the amount of $42.32. An Abstract of said Judgment has been duly filed of record in Volume 4, Page 98 of the Judgment Records of Marion County, Texas.

IV.

The Third Party Defendant, UNITED STATES OF AMERICA, asserts further that demand has been made upon the Defendant T. R. GRUBBS for payment of the Judgment set out above, and that the amounts set forth in the preceding paragraph have not been paid and presently remain due and owing to the UNITED STATES OF AMERICA.

V.

The Third Party Defendant, UNITED STATES OF AMERICA, asserts and contends that the judgment lien described in the preceding paragraph No. III constitutes a prior, paramount, and superior lien as against all assets or property presently in the possession of the Defendant T. R. GRUBBS; or which he may acquire in the future, as against all other claims or liens asserted by other parties to this proceeding.

WHEREFORE, all premises considered, the Third Party Defendant, UNITED STATES OF AMERICA, prays that on final hearing herein the indebtedness owed to the UNITED STATES OF AMERICA under and by virtue of the judgment lien set forth in the preceding Paragraph No. III. be declared prior, superior and paramount to any and all interests or claims asserted by other parties to this action, and further by way of affirmative relief, the Third Party Defendant, UNITED STATES OF AMERICA prays that it be granted judgment foreclosing this lien as set out herein as against all other parties to this action, and the Third Party Defendant, UNITED STATES OF AMERICA, further prays for such other relief, at law or in equity, as the Court may determine this Defendant to be entitled and for costs in this behalf expended..

CROSS ACTION

COMES NOW THE UNITED STATES OF AMERICA, pursuant to the provisions of Rule 13(g) of the Federal Rules of Civil Procedure, and brings this Cross Action against the Plaintiff, GENERAL ELECTRIC CREDIT CORPORATION and the Third Party Defendant, GENERAL ELECTRIC COMPANY, and for cause of action would show the Court as follows:

I.

That on or about September 15, 1962, T. R. GRUBBS dba T. R. GRUBBS TIRE & APPLIANCE, executed and delivered to the First State Bank of Hallsville, Texas a promissory note in the amount of $20,000.00, which note was subsequently transferred and assigned to the Small Business Administration, an agency and instrumentality of The United States of America, by the said First State Bank of Hallsville, Texas. , A true copy of said Note is attached hereto, marked "EXHIBIT A", and by reference

made a part hereof. The performance of the debtor Grubbs under the terms of this note was satisfactory and the account was in good standing at all times prior to May 1, 1965.

II.

The said T. R. GRUBBS defaulted on his installment payments in May, 1965 on said promissory note, and no further payments have been made to this date. On June 16, 1966, Judgment was obtained against THOMAS RAYFORD GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE COMPANY, in Civil Action No. 1126, Marshall Division, United States District Court for the Eastern District of Texas, for the balance due and owing on that date on said note in the amount of $6,935.87, plus interest at the rate of 6% per annum from the date of Judgment until paid.

III.

The non-performance and default of T. R. GRUBBS with respect to his duty and obligation to pay according to the terms of the promissory note described above were directly induced and caused by certain intentional acts of the Cross Defendant GENERAL ELECTRIC CREDIT CORPORATION and GENERAL ELECTRIC COMPANY, or their agents and employees, to wit:

(1) Beginning the latter part of 1964 GENERAL ELECTRIC CREDIT CORPORATION sent several representatives into the trade territory of T. R. GRUBBS to check on his accounts and repossess merchandise from those customers who were delinquent in their installment payments. Said representatives in the course of their employment made false, malicious and slanderous statements about Grubbs to various persons, the effect of which was to destroy the confidence of numerous customers, suppliers and financial institutions with respect to their business relationship with Grubbs.

(2) The agents and employees of the Cross Defendant GENERAL ELECTRIC CREDIT CORPORATION did further unlawfully convert various merchandise and items of property in which Grubbs had a lien interest to their own use or that of said Cross Defendant.

(3) That the Cross Defendant GENERAL ELECTRIC CREDIT CORPORATION engaged in a course of conduct generally intended to destroy the reputation and good will of the business of T. R. GRUBBS.

(4) Cross Defendant's, GENERAL ELECTRIC CREDIT CORPORATION, refusal to honor its agreements to extend Grubbs credit also prohibited him from stocking sufficient merchandise to carry on his business operations on a profitable basis.

(5) Cross Defendant's, GENERAL ELECTRIC COMPANY, acting in concert with GENERAL ELECTRIC CREDIT CORPORATION by withdrawing its franchise and refusing to sell additional merchandise to Grubbs, further prohibited him from carrying on his business operations on a profitable basis.

IV.

By reason of the acts set forth in the preceding paragraph, the Cross Defendants intentionally and without just cause or lawful right interfered with the right of the United States to performance on the part of T. R. GRUBBS in accordance with the terms of his promissory note. As a direct result of said acts, Grubbs was prevented from performing on his contract with the United States of America and as a result has defaulted in the payment of said promissory note causing the United States of America to incur actual damages in the amount of $6,935.97 plus interest at the rate of 6% per annum from June 16, 1966 until paid, in addition to Court Costs in the amount of $42.32.

V.

The said Cross Defendants were maliciously motivated and induced the default breach on the part of Grubbs through aggravated, fraudulent and oppressive methods, sufficient to justify the imposition of punitive damages.

WHEREFORE, PREMISES CONSIDERED, the Third Party Defendant and Cross Plaintiff, UNITED STATES OF AMERICA, prays that on final hearing herein Judgment be entered declaring that the Cross Defendants, GENERAL ELECTRIC CREDIT CORPORATION and GENERAL ELECTRIC COMPANY, have wrongfully and maliciously interfered with the performance of T. R. GRUBBS upon his contractual relationship with the UNITED STATES OF AMERICA; that Judgment be entered finding Cross Defendants jointly and severally liable for actual damages to the UNITED STATES OF AMERICA in the amount of $6,935.87 plus interest at the rate of 6% per annum from June 16, 1966, until paid, in addition to Court Costs in the amount of $42.32; and further that Judgment be entered requiring the Cross Defendants liable jointly and severally for the amount of $10,000.00 as punitive damages herein, and for such other and further relief at law or in equity as the Court may determine this Third

Party Defendant to be entitled, and for costs in this behalf expended.

Respectfully submitted,

Wm. Wayne Justice
United States Attorney
By: /s/ Carl Roth
Carl Roth
Assistant U. S. Attorney
P. O. Box 1510
Beaumont, Texas 77704
Attorneys for Third Party Defendant, United States of America

(Certificate of Service omitted in printing)

Exhibit A

NOTE

SBLP-296,574-MAR
Jefferson, Texas
(City and State)
(Date) September 15, 1962.

$20,000.00

For value received, Thomas Rayford Grubbs, dba T. R. Grubbs Tire & Appliance (hereinafter called "Undersigned"), promises to pay to the order of The First State Bank (hereinafter called "Holder"), at its banking house in the city of Hallsville, Texas, State of ....., or at Holder's option, at such other place as may be designated from time to time by the Holder, the sum of (Write out amount) Twenty Thousand and No/100 - - - - dollars with interest on the unpaid principal computed from the date of each advance to the Undersigned at the rate of 6 percent per annum* (on 25% of the loan and 4 percent per annum on

*To be filled in only on Immediate Participation loans.

75% of the loan) payment to be made in installments as follows: In the amount of $380 each, payable monthly, including principal and interest, beginning two (2) months from date of Note, and the balance of principal and interest payable five (5) years from date of Note; with the further provision that each said installment shall be applied first to interest accrued to the date of receipt of said installment, and the balance, if any, to principal. Payment of any installment of principal or interest owing on this Note may be made prior to the maturity date thereof without penalty.

Affirmative Covenants.— The Undersigned covenants and agrees that, until the payment in full of the moneys owing on this Note, the Undersigned will:

1. (a) Keep proper books of account in manner satisfactory to Holder; (b) Authorize at Undersigned's expense inspection and audits by Holder of any books, records and papers in the custody or control of Undersigned or others, relating to Undersigned's financial or business conditions, including the making of copies thereof and abstracts therefrom and inspection and appraisal of any of Undersigned's assets.

2. Deliver to Holder hereof within 45 days after the end of each fiscal annual period, a balance sheet of the Undersigned as of such date and a profit and loss statement of the Undersigned for such fiscal period, in form satisfactory to the Holder hereof;

3. Deliver to Holder hereof with reasonable promptness such other financial data at such times and in such form as Holder may request;

4. Pay all taxes, assessments and other governmental charges to which the Undersigned, or the property of the Undersigned, is or shall be subject before such charges become delinquent, except that no such charge need be paid so long as its validity or amount shall be contested in good faith by appropriate proceedings and the Undersigned shall have set up on the books of the Undersigned such reserve with respect thereto as shall be required by sound accounting practices;

5. Keep all of the real and tangible personal property of the Undersigned insured in such amounts and against such risks as may be satisfactory to the Holder or as are commonly insured against in the same areas by owners of similar property, and maintain in force policies of insurance, satisfactory to Holder, against liability for damage to persons or property and under all applicable workmen's compensation laws;

6. Use the proceeds of the loan solely for the purposes approved in the Authorization for the Loan issued to Bank by Small Business Administration (hereinafter called "SBA").

7. On demand, reimburse Holder and SBA, respectively, for any and all expenses incurred, or which may be hereafter incurred by Holder or SBA from time to time in connection with or by reason of borrower's application for, and the making and administration of, the loan.

8. Compensation. - - Borrower will limit the total annual compensation (including salaries, withdrawals, fees, bonuses, commissions, drawing accounts and other payments whether direct or indirect, in

money, or otherwise) of all officers, stockholders, directors, partners, proprietors or others named herein to the following named persons in the amount set opposite each respective name:

Name	Position	Amount

and, if permitted by the Authorization or by Holder, such additional amount to each said party as may be necessary to pay his income taxes on said compensation computed on the basis that such compensation is his only income, provided that such additional amount shall not exceed the net tax payable by each said party. Borrower, if a corporation, may, upon prior written notice to Bank of its intention so to do, accrue on its books or pay additional compensation to any person named herein provided that, if paid, such additional compensation is immediately loaned to Borrower by such person for the use of Borrower until the Loan is paid in full.

Negative Covenants.— The Undersigned covenants and agrees that, without the prior written consent of the Holder hereof, the Undersigned will not:

1. Create, assume or otherwise suffer to exist any mortgage, pledge or other incumbrance upon any of the real or tangible personal property of the Undersigned, whether now owned or hereafter acquired, except (a) liens for taxes or other governmental charges not delinquent or being contested in good faith, or (b) purchase money liens upon property acquired after the date of the Note, and other liens upon such property at the time of the acquisition thereof.

2. (a) If Undersigned is a corporation, declare or pay any dividend or make any distribution upon its capital stock, or purchase or retire any of its capital stock, or consolidate or merge with any other company, or make any advance, directly or indirectly, by way of loan, gift, bonus, commission, or otherwise, to any company directly or indirectly controlling or affiliated with or controlled by Undersigned, or to any officer, director, or employee of Undersigned, or of any such company, (b) if, Unsigned is a partnership or individual, make any distribution of assets of the business of Undersigned, other than reasonable compensation for services, or make any advance, directly or indirectly, by way of loan, gift, bonus, commission, or otherwise, to any partner or any of its employees, or to any company directly or indirectly controlling or affiliated with or controlled by Undersigned.

Events of Default. The indebtedness (including principal, interest and expenses) shall immediately become due and payable, without notice or demand, upon the appointment of a receiver or liquidator, whether voluntary or involuntary, for the Undersigned or for any of its property, or upon the filing of a petition by or against the Undersigned under the provisions of any State insolvency law or under the provisions of the Bankruptcy Act of 1898, as amended, or upon the making by the Undersigned of an assignment for the benefit of its creditors. Holder is authorized to declare all or any part of the indebtedness immediately due and payable upon the happening of any of the following events: (1) Failure to pay any part of the indebtedness when due; (2) nonperformance by the Undersigned of any agreement with, or any condi-

tion imposed by Holder or SBA, or either of them, with respect to the indebtedness; (3) Holder's discovery of the Undersigned's failure in any application of the Undersigned to Holder or SBA to disclose any fact deemed by Holder to be material or of the making therein or in any of the said agreements, or in any affidavit or other documents submitted in connection with said application or the indebtedness, or of any misrepresentation by, on behalf of, or for the benefit of the Undersigned; (4) the reorganization (other than a reorganization pursuant to any of the provisions of the Bankruptcy Act of 1898, as amended) or merger or consolidation of the Undersigned (or the making of any agreement therefor) without the prior written consent of Holder; (5) the Undersigned's failure duly to account, to Holder's satisfaction, at such time or times as Holder may require, for any of the collateral, or proceeds thereof, coming into the control of the Undersigned; or (6) the institution of any suit affecting the Undersigned deemed by Holder to affect adversely its interest hereunder in the collateral or otherwise. Holder's failure to exercise any of its rights under this paragraph shall not constitute a waiver thereof.

Upon nonpayment of interest or any installment of principal when due, the Undersigned and sureties authorize the Holder to sell, at public or private sale, any or all collateral deposited and property pledged to secure the payment of this Note, and apply the proceeds of sale, less expense, to the payment of this Note.

The security rights of Holder and its assigns hereunder shall not be impaired by any indulgence, release, renewal, extension, or modification which Holder may grant with respect to the indebtedness or any part thereof,

or in respect to the collateral or in respect to any endorser, guarantor, or surety without notice or consent of the Undersigned or any endorser, guarantor or surety.

Thomas Rayford Grubbs, dba
T. R. Grubbs Tire & Appliance
s/ Thomas Rayford Grubbs

I/We hereby guarantee payment of this Note:

.....

..... (If guaranty is required in a loan over $50,000, Bank shall obtain guaranty on SBA Form 148A.)

Note.—Corporate applicants or guarantors must execute Note, in corporate name, by duly authorized officer, and seal must be affixed and duly attested; partnership applicants or guarantors must execute Note at least in firm name, together with signature of a general partner.

(Certificate of Authentication omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION,
Plaintiff,
vs.
T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Defendant.

Civil Action No. 1273

MOTION FOR CONTINUANCE

(Filed June 12, 1968)

TO THE HONORABLE JUDGE OF SAID COURT:

Plaintiff and Cross-Defendant General Electric Credit Corporation and Cross-Defendant General Electric Company move the court for a continuance of this cause and the trial thereof to the next term of this court, and as grounds for this motion said Movants make representations as follows:

1. The scope of this cause was materially increased by the filing of the Answer and Cross-Action of the United States of America on or about March 20, 1968. In response to such pleading of the United States of America, General Electric Credit Corporation and General Electric Company filed motions which have not been ruled on to date. The motion of General Electric Credit Corporation pointed out the need of additional parties, and in reply to that point the United States of America stated that it would not oppose the relief involving the joining of other parties under Rule 21.

2. With respect to the motions relating to the dismissal of the Cross-Action of the United States of America the latter has filed on or about May 17, 1968, a motion for leave to amend this pleading to set forth facts which are apparently deemed to be needed to state a legal basis for complaint.

3. The attorneys of record for the United States of America and for T. R. Grubbs, d/b/a T. R. Grubbs Tire & Appliance have indicated that they are not opposed to the granting of this motion for continuance and the entry of an order continuing this cause until the next term of this court.

DATED at Dallas, Texas, this 11th day of June, 1968.

/s/ Hubert D. Johnson
Hubert D. Johnson
Of Carrington, Johnson & Stephens
1900 Mercantile Dallas Building
Dallas, Texas 75201 RI 8-7161
Attorneys for General Electric Credit Corporation

/s/ Morris Harrell
Morris Harrell
Of Rain, Harrell & Emery
4200 Republic National Bank Tower
Dallas, Texas 75201 RI 2-1021
Attorneys for General Electric Company

(Certificate of Service omitted in printing.)
(Certificate of Authentication omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION,
Plaintiff,
vs.
T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Defendant.

Civil Action No. 1273

ORDER FOR CONTINUANCE

(Filed June 13, 1968)

The Court having considered the Motion for Continuance filed herein by General Electric Credit Corporation and General Electric Company, and being satisfied that the same should be granted, it is hereby ordered that this cause be and the same is hereby continued to the next term of this Court.

ENTERED this the 13th day of June, 1968.

/s/ Joe J. Fisher
United States District Judge

(Certificate of Authentication omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION,
Plaintiff,
vs.
T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Defendant.
} Civil Action No. 1273

ORDER ADDING PARTIES DEFENDANT

(Filed June 20, 1968)

This cause came on for hearing on the Motion of Plaintiff General Electric Credit Corporation for an order making as additional parties herein the following:

The Lee Hardware Co.
E. A. Credit Co.
Southwest Factoring Corp.
Higginbotham Pearlstone Hardware
Carver Chair Co., Inc.
Cullum & Boren Co.
Goodyear Tire & Rubber Co.

And it appearing to the Court that said parties are necessary parties defendant and that they can be served with summons and are subject to the venue of this Court and that such joinder will not deprive this Court of jurisdiction:

IT IS, THEREFORE, ORDERED that said The Lee Hardware Co., E. A. Credit Co., Southwest Factoring Corp., Higginbotham Pearlstone Hardware, Carver Chair Co., Inc., Cullum & Boren Co., and Goodyear Tire & Rubber

Co., be named parties defendant to this action and that Defendant T. R. Grubbs and Third Party Defendant United States of America shall amend their pleadings accordingly and serve copies of their amended pleadings together with a summons and a copy of this order on said additional parties named within 15 days after the entry of this order.

ENTERED this the 6th day of June, 1968.

/s/ Joe J. Fisher
United States District Judge

(Certificate of Authentication omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION, Plaintiff, vs. T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE, Defendant.	Civil Action No. 1273

AMENDED ANSWER AND CROSS ACTION OF THE UNITED STATES OF AMERICA

(Filed June 20, 1968)

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW THE UNITED STATES OF AMERICA, acting by and through its Attorney, WM. WAYNE JUSTICE, United States Attorney for the Eastern District of Texas, and files this its Amended Answer and Cross Action to the Defendant's T. R. GRUBBS, Cross Action, and would respectfully show the Court as follows:

I.

The Third Party Defendant, UNITED STATES OF AMERICA, denies generally each and every allegation of the Defendant's, T. R. GRUBBS, Cross Action in this case.

II.

The Third Party Defendant, UNITED STATES OF AMERICA, specifically denies that any party to this action has any lien or claim superior or paramount to that of this Third Party Defendant.

III.

The Third Party Defendant, UNITED STATES OF AMERICA, alleges and contends and would show the Court that it has a prior and superior claim against any and all assets or property presently in the possession of T. R. GRUBBS, or which he might acquire in the future, by virtue of the Judgment in favor of the United States of America against said T. R. GRUBBS in Civil Action No. 1126, Marshall Division, United States District Court for the Eastern District of Texas, said Judgment was obtained June 16, 1966, in the amount of $6,935.87, plus interest thereon at the rate of 6% per annum from the date of Judgment until paid, in addition to Court Costs in the amount of $42.32. An Abstract of said Judgment has been duly filed of record in Volume 4, Page 98 of the Judgment Records of Marion County, Texas.

IV.

The Third Party Defendant, UNITED STATES OF AMERICA, asserts further that demand has been made upon the Defendant T. R. GRUBBS for payment of the Judgment set out above, and that the amounts set forth

in the preceding paragraph have not been paid and presently remain due and owing to the UNITED STATES OF AMERICA.

V.

The Third Party Defendant, UNITED STATES OF AMERICA, asserts and contends that the judgment lien described in the preceding paragraph No. III constitutes a prior, paramount, and superior lien as against all assets or property presently in the possession of the Defendant T. R. GRUBBS, or which he may acquire in the future, as against all other claims or liens asserted by other parties to this proceeding.

WHEREFORE, all premises considered, the Third Party Defendant, UNITED STATES OF AMERICA, prays that on final hearing herein the indebtedness owed to the UNITED STATES OF AMERICA under and by virtue of the judgment lien set forth in the preceding Paragraph No. III. be declared prior, superior and paramount to any and all interests or claims asserted by other parties to this action, and further by way of affirmative relief, the Third Party Defendant, UNITED STATES OF AMERICA prays that it be granted judgment foreclosing this lien as set out herein as against all other parties to this action, and the Third Party Defendant, UNITED STATES OF AMERICA, further prays for such other relief, at law or in equity, as the Court may determine this Defendant to be entitled and for costs in this behalf expended.

CROSS ACTION

COMES NOW THE UNITED STATES OF AMERICA, pursuant to the provisions of Rule 13(g) of the Federal Rules of Civil Procedure, and brings this Cross Action against the Plaintiff, GENERAL ELECTRIC CREDIT CORPORATION and the Third Party Defendant, GENERAL ELECTRIC COMPANY, and for cause of action would show the Court as follows:

I.

That on or about September 15, 1962, T. R. GRUBBS dba T. R. GRUBBS TIRE & APPLIANCE, executed and delivered to the First State Bank of Hallsville, Texas, a promissory note in the amount of $20,000.00, which note was subsequently transferred and assigned to the Small Business Administration, an agency and instrumentality of the United States of America, by the Said First State Bank of Hallsville, Texas. A true copy of said Note is attached hereto, marked "EXHIBIT A", and by reference made a part hereof. The performance of the debtor Grubbs under the terms of this note was satisfactory and the account was in good standing at all times prior to May 1, 1965.

The Cross Defendants, GENERAL ELECTRIC CREDIT CORPORATION and GENERAL ELECTRIC COMPANY, had actual and constructive knowledge of the existence of this contractual obligation through their agents and employees in their respective local or field offices prior to the Cross Defendants embarking upon the course of conduct complained of hereafter.

II.

The said T. R. GRUBBS defaulted on his installment payments in May, 1965 on said promissory note, and no further payments have been made to this date. On June

16, 1966, Judgment was obtained against THOMAS RAYFORD GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE COMPANY, in Civil Action No. 1126, Marshall Division, United States District Court for the Eastern District of Texas, for the balance due and owing on that date on said note in the amount of $6,935.87, plus interest at the rate of 6% per annum from the date of Judgment until paid.

III.

The non-performance and default of T. R. GRUBBS with respect to his duty and obligation to pay according to the terms of the promissory note described above were directly induced and caused by certain intentional acts of the Cross Defendant GENERAL ELECTRIC CREDIT CORPORATION and GENERAL ELECTRIC COMPANY, or their agents and employees, to wit:

(1) Beginning the latter part of 1964 GENERAL ELECTRIC CREDIT CORPORATION sent several representatives into the trade territory of T. R. GRUBBS to check on his accounts and repossess merchandise from those customers who were delinquent in their installment payments. Said representatives in the course of their employment made false, malicious and slanderous statements about Grubbs to various persons, the effect of which was to destroy the confidence of numerous customers, suppliers and financial institutions with respect to their business relationship with Grubbs.

(2) The agents and employees of the Cross Defendant GENERAL ELECTRIC CREDIT CORPORATION did further unlawfully convert various merchandise and items of property in which Grubbs had a lien interest to their own use or that of said Cross Defendant.

(3) That the Cross Defendant GENERAL ELECTRIC CREDIT CORPORATION engaged in a course of conduct generally intended to destroy the reputation and good will of the business of T. R. GRUBBS.

(4) Cross Defendant's, GENERAL ELECTRIC CREDIT CORPORATION, refusal to honor its agreements to extend Grubbs credit also prohibited him from stocking sufficient merchandise to carry on his business operations on a profitable basis.

(5) Cross Defendant's, GENERAL ELECTRIC COMPANY, acting in concert with GENERAL ELECTRIC CREDIT CORPORATION by withdrawing its franchise and refusing to sell additional merchandise to Grubbs, further prohibited him from carrying on his business operations on a profitable basis.

IV.

By reason of the acts set forth in the preceding paragraph, the Cross Defendants intentionally and without just cause or lawful right interfered with the right of the United States to performance on the part of T. R. Grubbs in accordance with the terms of his promissory note. As as direct result of said acts, Grubbs was prevented from performing on his contract with the United States of America and as a result has defaulted in the payment of said promissory note causing the United States of America to incur actual damages in the amount of $6,935.87 plus interest at the rate of 6% per annum from June 16, 1966 until paid, in addition to Court Costs in the amount of $42.32.

V.

The said Cross Defendants were maliciously motivated and induced the default breach on the part of Grubbs

through aggravated, fraudulent and oppressive methods, sufficient to justify the imposition of punitive damages.

WHEREFORE, PREMISES CONSIDERED, the Third Party Defendant and Cross Plaintiff, UNITED STATES OF AMERICA, prays that on final hearing herein Judgment be entered declaring that the Cross Defendants, GENERAL ELECTRIC CREDIT CORPORATION and GENERAL ELECTRIC COMPANY, have wrongfully and maliciously interfered with the performance of T. R. GRUBBS upon his contractual relationship with the UNITED STATES OF AMERICA: that Judgment be entered finding Cross Defendants jointly and severally liable for actual damages to the UNITED STATES OF AMERICA in the amount of $6,935.87 plus interest at the rate of 6% per annum from June 16, 1966, until paid, in addition to Court Costs in the amount of $42.34; and further that Judgment be entered requiring the Cross Defendants liable jointly and severally for the amount of $10,000.00 as punitive damages herein, and for such other and further relief at law or in equity as the Court may determine this Third Party Defendant to be entitled, and for costs in this behalf expended.

Respectfully submitted,

Wm. Wayne Justice
United States Attorney
By: Carl Roth
Assistant U. S. Attorney
P. O. Box 1510
Beaumont, Texas 77704
Attorneys for Third Party
Defendant, United States of
America

(Certificate of Service omitted in printing.)

Exhibit A

Exhibit A is identical to the Exhibit A found on page 36 of this appendix.

(Certificate of Authentication omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION, Plaintiff, vs. T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE, Defendant.	Civil Action No. 1273

ORIGINAL ANSWER OF GENERAL ELECTRIC CREDIT CORPORATION TO THE AMENDED ANSWER AND CROSS-ACTION OF THE UNITED STATES OF AMERICA

(Filed July 1, 1968)

TO THE HONORABLE JUDGE OF SAID COURT:

Comes Now General Electric Credit Corporation and files this its Original Answer to the Amended Answer and Cross-Action of the United States of America filed herein, and for such Original Answer said General Electric Credit Corporation would respectfully show the Court:

1. Regarding the matters set forth in Paragraphs I through V of the said Answer of the United States of America relating to the alleged prior judgment lien held by the United States of America, General Electric Credit Corporation says that it is not involved in that phase of the controversy in view of the fact that it does not hold

or claim to hold a judgment lien against any of the property of said T. R. Grubbs, d/b/a T. R. Grubbs Tire & Appliance.

2. Replying to the first unnumbered paragraph of Paragraph I of said Cross-Action of the United States of America, General Electric Credit Corporation says that it does not have sufficient knowledge or information to either admit or deny such allegations of fact.

3. Replying to the second unnumbered paragraph of Paragraph I of said Cross-Action, General Electric Credit Corporation denies the said allegations regarding its alleged actual and constructive knowledge as alleged.

4. Replying to the allegations contained in Paragraph II of said Cross-Action, General Electric Credit Corporation says that it does not have knowledge or information sufficient to either admit or deny such allegations of fact.

5. Replying to the allegations contained in Paragraph III of said Cross-Action, General Electric Credit Corporation denies all such allegations except to the extent shown more fully hereinafter in this paragraph. General Electric Credit Corporation admits that it did check on accounts that had been assigned to it and did make some repossessions of merchandise of accounts assigned to it, but denies that it made any false, malicious and slanderous statements as alleged. It denies that it or any of its agents or employees unlawfully converted any merchandise or property in which the said Grubbs had a lien interest. It denies that it engaged in any course of conduct intended to destroy the reputation and good will of T. R. Grubbs. It denies that it was obligated to extend the said Grubbs any credit. It denies that it acted in concert with General Electric Company in connection with any franchise withdrawal or refusal to sell additional merchandise to the said Grubbs.

6. Replying to the allegations contained in Paragraph IV of said Cross-Action, General Electric Credit Corporation denies all such allegations.

7. Replying to the allegations contained in Paragraph V of said Cross-Action, General Electric Credit Corporation denies such allegations.

8. Answering further and without waiving any of the foregoing, General Electric Credit Corporation says that any cause of action, if there had been any, based on alleged false, malicious and slanderous statements regarding Grubbs made in the latter part of 1964 would be and are barred by the one-year statute of limitations contained in Article 5524 of the Revised Civil Statutes of the State of Texas. In this connection, General Electric Credit Corporation points out that T. R. Grubbs did not assert any claim on that basis until December of 1966 or early January of 1967 and that the United States of America did not assert any claim on that basis until March 20, 1968. Accordingly, General Electric Credit Corporation says that such alleged cause of action, if any, is long since barred by the said one-year statute of limitations, which said statute is specially pled as a bar to the Cross-Action asserted herein by the United States of America.

9. Answering further and without waiving any of the foregoing, General Electric Credit Corporation says that the alleged cause of action based on claimed conversion of merchandise and items of property and the other matters set forth in Paragraph III of said Cross-Action are all based on actions that occurred more than two years before any claim was asserted by T. R. Grubbs and much more than two years before the Cross-Action was filed herein by the United States of America on March 20, 1968. Such alleged causes of action, if any, are barred by the two-year statute of limitations contained in Article

5526 of the Revised Civil Statutes of the State of Texas, and said two-year statute of limitations is specially pled as a bar to the Cross-Action filed herein by the United States of America.

WHEREFORE, PREMISES CONSIDERED, General Electric Credit Corporation prays that the United States of America take nothing against it on said Cross-Action and that insofar as such Cross-Action is concerned General Electric Credit Corporation be dismissed with its costs and for such other relief to which it may be entitled.

/s/ Hubert D. Johnson
Hubert D. Johnson
Of Carrington, Johnson & Stephens
1900 Mercantile Dallas Building
Dallas, Texas 75201 RI 8-7161
Attorneys for General Electric
Credit Corporation

(Certificate of Service omitted in printing.)
(Certificate of Authentication omitted
in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION, Plaintiff, vs. T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE, Defendant.	Civil Action No. 1273

DEFENDANT'S ORIGINAL ANSWER TO AMENDED ANSWER AND CROSS-ACTION OF THE UNITED STATES OF AMERICA

(Filed July 3, 1968)

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, GENERAL ELECTRIC COMPANY, a Defendant in the above entitled and numbered cause, and files this its Original Answer to the Amended Answer and Cross-Action of the United States of America, and would show as follows:

FIRST DEFENSE

The Amended Cross-Action fails to state a claim against Defendant upon which relief can be granted.

SECOND DEFENSE

With respect to the allegations contained in the Amended Cross-Action of the United States of America, Defendant pleads as follows:

1. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations

contained in the first three sentences of Paragraph I, and such allegations are therefore denied. Defendant denies the allegations contained in the fourth sentence of Paragraph I.

2. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph II, and such allegations are therefore denied.

3. Defendant denies the allegations contained in Paragraph III.

4. Defendant denies the allegations contained in Paragraph IV.

5. Defendant denies the allegations contained in Paragraph V.

6. Defendant denies each and every allegation which has not been admitted or specifically denied herein.

THIRD DEFENSE

The alleged cause of action set forth in the Amended Cross-Action of the United States of America for injuries done to the character or reputation of T. R. Grubbs by libel or slander were not commenced and prosecuted within one year after the alleged cause of action accrued, and said alleged cause of action is barred by the provisions of Article 5524 of the Revised Civil Statutes of Texas.

FOURTH DEFENSE

The alleged cause of action set forth in the Amended Cross-Action of the United States of America did not accrue within two years before the commencement of this action and is therefore barred by the two year Statute of Limitations contained in Article 5526 of the Revised Civil Statutes of Texas.

WHEREFORE, PREMISE CONSIDERED, Defendant prays that Plaintiff take nothing by this suit and that this Defendant be allowed to go hence without day and recover its costs.

Rain, Harrell & Emery
/s/ Morris Harrell
Morris Harrell
/s/ Stan McMurry
Stan McMurry
4200 Republic Bank Tower
Dallas, Texas 75201
Attorneys for Defendant, General Electric Company

(Certificate of Authentication omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION, Plaintiff, vs. T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE, Defendant.	Civil Action No. 1273

DEFENDANT GENERAL ELECTRIC COMPANY'S AMENDED ANSWER TO THE CROSS-ACTION OF T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE

(Filed October 17, 1969)

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now, GENERAL ELECTRIC COMPANY, a Defendant in the above entitled and numbered cause,

and files this its Amended Answer to the Defendant's Third Amended Answer and Cross-Action filed in Cause No. 17,791 in the District Court of Marion County, Texas, which is the last pleading of the Defendant, T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE which was served upon the Defendant, GENERAL ELECTRIC COMPANY, and would show as follows:

FIRST DEFENSE

The Amended Cross-Action fails to state a claim against this Defendant upon which relief can be granted.

SECOND DEFENSE

With respect to the allegations contained in the Amended Cross-Action of T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE, this Defendant pleads as follows:

1. Defendant denies the allegations set out in the Third Amended Original Answer of the Defendant Grubbs contained in Paragraph IX, and states with respect to all other allegations contained in Defendant's Third Amended Original Answer which was adopted by reference in Paragraph I of the Cross-Action that it is without knowledge or information sufficient to form a belief as to the truth of the allegations, and such allegations are therefore denied.

2. Defendant denies the allegations contained in Paragraph II of the Cross-Action.

3. Defendant denies the allegations contained in Paragraph III of the Cross-Action.

4. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph IV of the Cross-Action, and such allegations are therefore denied.

5. Defendant denies the allegations contained in Paragraph V of the Cross-Action.

6. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph VI of the Cross-Action, and such allegations are therefore denied.

7. Defendant denies the allegations contained in Paragraph VII of the Cross-Action.

8. Defendant denies the allegations contained in Paragraph VIII of the Cross-Action.

9. Defendant denies the allegations contained in Paragraph IX of the Cross-Action.

10. Defendant denies the allegations contained in Paragraph X of the Cross-Action.

11. Defendant denies the allegations contained in Paragraph XI of the Cross-Action.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XII of the Cross-Action pertaining to his alleged execution of a promissory note and payments thereon and the institution of suit by the United States of America, and such allegations are therefore denied, and Defendant denies all other allegations contained in Paragraph XII of the Cross-Action.

13. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XIII, and such allegations are therefore denied.

14. Defendant denies the allegations contained in Paragraph XIV (a) of the Cross-Action.

15. Defendant denies the allegations contained in Paragraph XIV (a) of the Cross-Action.

16. Defendant denies each and every allegation which has not been admitted or specifically denied herein.

THIRD DEFENSE

The alleged cause of action set forth in said Amended Cross-Action of T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE for injuries done to the character or reputation of T. R. Grubbs by libel or slander (if such claims are made against the Defendant, GENERAL ELECTRIC COMPANY) were not commenced and prosecuted within one year after the alleged cause of action accrued, and said alleged cause of action is barred by the provisions of Article 5524 of the Revised Civil Statutes of Texas.

FOURTH DEFENSE

The alleged cause of action set forth in the Amended Cross-Action of T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE did not accrue within two years before the commencement of this action and is therefore barred by the two year Statute of Limitations contained in Article 5526 of the Revised Civil Statutes of Texas.

WHEREFORE, PREMISES CONSIDERED, Defendant prays that T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE, Cross-Plaintiff, take nothing by this suit, and that this Defendant be allowed to go hence without day, and recover its costs.

Rain, Harrell & Emery
/s/ Morris Harrell
Morris Harrell
4200 Republic National Bank Tower
Dallas, Texas 75201
Attorneys for Defendant,
General Electric Company

(Certificate of Authentication omitted in printing.)

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION,
Plaintiff,
vs.
T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Defendant.

Civil Action No. 1273

CROSS-DEFENDANT GENERAL ELECTRIC CREDIT CORPORATION'S AMENDED ANSWER TO THE CROSS-ACTION OF T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE

(Filed October 20, 1969)

TO THE HONORABLE JUDGE OF SAID COURT:

Comes now GENERAL ELECTRIC CREDIT CORPORATION, a Cross-Defendant in the above entitled and numbered cause, and files this its Amended Answer to the Defendant's Third Amended Answer and Cross-Action filed in Cause No. 17,791 in the District Court of Marion County, Texas, which is the last pleading of the Defendant, T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE which was served upon this Cross-Defendant and would show as follows:

FIRST DEFENSE

The said Amended Cross-Action fails to state a claim against this Cross-Defendant upon which relief can be granted.

SECOND DEFENSE

With respect to the allegations contained in the Amended Cross-Action of T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE, this Cross-Defendant pleads as follows:

1. Cross-Defendant denies that it or any of its agents or representatives engaged in any fraudulent or tortious conduct as alleged in Paragraph I of said Cross-Action.

2. Cross-Defendant denies the allegations contained in Paragraph II of the Cross-Action.

3. Cross-Defendant denies the allegations contained in Paragraph III of the Cross-Action.

4. Cross-Defendant denies that it or any of its agents or representatives made any false, malicious or slanderous accusations as alleged in Paragraph IV of the Cross-Action.

5. Cross-Defendant denies the allegations contained in Paragraph V of the Cross-Action.

6. Cross-Defendant denies the allegations contained in Paragraph VI of the Cross-Action.

7. Cross-Defendant denies the allegations contained in Paragraph VII of the Cross-Action.

8. Cross-Defendant denies the allegations contained in Paragraph VIII of the Cross-Action.

9. Cross-Defendant denies the allegations contained in Paragraph IX of the Cross-Action.

10. Cross-Defendant denies the allegations contained in Paragraph X of the Cross-Action.

11. Cross-Defendant denies the allegations contained in Paragraph XI of the Cross-Action.

12. Cross-Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XII of the Cross-Action pertaining to his alleged execution of a promissory note and payments thereon and the institution of suit by the United States of America, and such allegations are therefore denied, and Defendant denies all other allegations contained in Paragraph XII of the Cross-Action.

13. Cross-Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph XIII, and such allegations are therefore denied.

14. Cross-Defendant denies the allegations contained in Paragraph XIV of the Cross-Action.

15. Cross-Defendant denies the allegations contained in Paragraph XIV (a) of the Cross-Action.

16. Cross-Defendant denies each and every allegation which has not been admitted or specifically denied herein.

THIRD DEFENSE

The alleged cause of action set forth in said Amended Cross-Action of T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE for injuries done to the character or reputation of T. R. GRUBBS by libel or slander were not commenced and prosecuted within one year after the alleged cause of action accrued, and said alleged cause of action is barred by the provisions of Article 5524 of the Revised Civil Statutes of Texas.

FOURTH DEFENSE

The alleged cause of action set forth in the Amended Cross-Action of T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE did not accrue within two years before the

commencement of this action and is therefore barred by the two year Statute of Limitations contained in Article 5526 of the Revised Civil Statutes of Texas.

WHEREFORE, PREMISES CONSIDERED, Cross-Defendant prays that T. R. GRUBBS d/b/a T. R. GRUBBS TIRE & APPLIANCE, Cross-Plaintiff, take nothing by this suit, and that this Cross-Defendant be allowed to go hence without day, and recover its costs.

/s/ Hubert D. Johnson
Hubert D. Johnson
Of: Carrington, Johnson & Stephens
1900 Dallas Mercantile Building
Dallas, Texas 75201 RI 8-7161
Attorneys for General Electric Credit Corporation

(Certificate of Service omitted in printing.)
(Certificate of Authentication omitted in printing.)

PORTIONS OF INTERROGATORIES BY GRUBBS AND ANSWERS BY GENERAL ELECTRIC COMPANY AND GENERAL ELECTRIC CREDIT CORPORATION

(Taken from the Reporters Transcript of Evidence in U. S. District Court.)

* * *

Interrogatory No. 12: When was General Electric Corporation incorporated and where?

ANSWER: 1892, in New York.

Interrogatory No. 14: What relation does General Electric Credit Corporation have with General Electric Corporation?

ANSWER: (Of General Electric Corporation) General Electric Credit Corporation is wholly owned subsidiary of General Electric Company. (The same answer by GECC)

Interrogatory No. 15: Is General Electric Credit Corporation a subsidiary of General Electric Corporation?

ANSWER: Both answered yes.

Interrogatory No. 16: Do General Electric Corporation and General Electric Credit Corporation have interlocking or over-lapping directorates or officials? How?

ANSWER: (General Electric Company) All the directors of General Electric Credit Corporation are officers or employees of General Electric Company.

ANSWER (GECC): Some of the officers of General Electric Company are members of the board of directors of General Electric Credit Corporation. Five of the seven directors of General Electric Credit Corporation are officers of General Electric Company.

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION, Plaintiff, vs. T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE, Defendant.	Civil Action No. 1273

FINAL PRE-TRIAL ORDER

GENERAL STATEMENT OF HISTORY AND NATURE OF THE CASE

Plaintiff General Electric Credit Corporation through Messrs. Baldwin & Curry of Marshall, Texas, instituted this action against Defendant T. R. Grubbs, d/b/a T. R. Grubbs Tire & Appliance, in the District Court of Marion County,

Texas on September 3, 1964. Said Plaintiff sought to recover judgment on a promissory note in the principal sum of $66,923.47, dated March 12, 1964. The action was docketed as Cause No. 17,791.

Said Defendant Grubbs through Messrs. Cornelius & Cornelius of Jefferson, answered by an unsworn general denial.

In October of 1966 after the suit had been pending a little over two years said Defendant Grubbs filed his First Amended Answer and Cross-Action. In this unsworn pleading said Defendant renewed his general denial and asserted as affirmative defenses failure of consideration and fraud in the inducement. In this pleading filed in October of 1966 said Grubbs asserted a cross-action against the Plaintiff and against General Electric Company, the latter being made a party to the suit for the first time in October of 1966. This cross-action claimed damages including punitive damages for alleged slander occurring in October, November and December of 1964, and conversion and conspiracy in restraint of trade occurring prior to the institution of the action in September of 1964.

Thereafter, in due time General Electric Credit Corporation through Messrs. Carrington, Johnson & Stephens of Dallas, Texas, filed its answer to such cross-action; and in due time said General Electric Company through Messrs. Rain, Harrell & Emery of Dallas, Texas, filed its answer to the cross-action against it.

On November 1, 1967, said T. R. Grubbs filed his Second Amended Answer and Cross-Action. In the Cross-Action part of this amended pleading and particularly in Paragraph XI thereof said Grubbs specified his reason for making the United States of America a new party defendant to the action. In said Paragraph XI 9 judgments were listed including one in favor of the United States of Amer-

ica. The State Court was asked to determine priorities among the said judgments.

On or about January 19, 1968, said Grubbs filed his Third Amended Answer and Cross-Action, which did not vary materially from the pleading that had been filed November 1, 1967.

On or about February 16, 1968 the United States of America duly filed its Petition for Removal and thereby removed this case to the Federal Court after it had been pending in the State Court approximately three and one-half years.

On or about March 20, 1968 said United States of America filed its Answer and Cross-Action. In response thereto General Electric Credit Corp. and General Electric Company duly filed motions under Rule 12. As of June 20, 1968 an order was entered requiring a more definite statement, and another order was entered requiring the making of additional party defendants. As to the more definite statement the United States of America did amend its pleading, and both General Electric Credit Corporation and General Electric Company have answered the Amended Answer and Cross-Action of the United States of America.

The order entered June 20, 1968 designated "Order Adding Parties Defendant" required that some seven new parties be added and that "Defendant T. R. Grubbs and Third Party Defendant United States of America shall amend their pleadings accordingly and serve copies of their amended pleadings together with a summons and a copy of this order on said additional parties." This was never done as required in said order. Three of the seven parties named in said order have intervened. T. R. Grubbs did not amend his pleading as required by said June 20, 1968 order.

The last pleading of Grubbs received by General Electric Credit Corporation and General Electric Company was his Third Amended Answer and Cross-Action filed in the state Court in January of 1968. General Electric Credit Corporation and General Electric Company have filed pleadings in the Federal Court responding to that State Court pleading.

List of Counsel for the Parties

Plaintiff General Electric Credit Corporation is represented by Mr. Hubert D. Johnson of Messrs. Carrington, Johnson and Stephens of Dallas, Texas.

Defendant and Cross-Plaintiff T. R. Grubbs is represented by Mr. J. R. Cornelius of Messrs. Cornelius & Cornelius of Jefferson, Texas.

Defendant General Electric Company is represented by Mr. Morris Harrell and Mr. Stan McMurry of Messrs. Rain, Harrell & Emery of Dallas, Texas.

Defendant and Cross-Plaintiff United States of America is represented by Mr. Houston Able, Assistant United States Attorney of Tyler, Texas.

The three intervenors referred to above are represented herein by their counsel of record. They are listed in Exhibit A attached.

Nature of the Action and Jurisdiction

The nature of the action is fully described in the "General Statement" set out hereinabove. The jurisdiction of this Court is based on Section 2410(a) of Title 28, U.S.C. referred in the Petition for Removal filed by the United States of America.

Statement of Claim of Plaintiff General Electric Credit Corporation

Plaintiff sued initially as the holder of a note dated March 12, 1964 in the principal sum of $66,923.48, a copy of which is attached as an exhibit to its original petition. Plaintiff also sued for 10% attorneys fees as provided for in the note.

Statement of Defenses of Defendant T. R. Grubbs

In his Third Amended Answer and Cross-Action, an unsworn pleading, Defendant Grubbs pleads:

1. a general denial;
2. total failure of consideration by virtue of alleged facts fully stated; and
3. that the execution and delivery of the note was conditioned upon certain performances by the Plaintiff and upon the truth of certain agreements and representations.

Regarding the Cross-Action of Defendant T. R. Grubbs

In this Third Amended Answer and Cross-Action said T. R. Grubbs alleges rights of recovery against General Electric Credit Corporation and General Electric Company based on the following allegations:

1. an alleged fraudulent scheme and conspiracy to put Grubbs out of business;
2. the withdrawal by General Electric Company of the franchise to Grubbs as a part of the conspiracy;
3. slanderous accusations allegedly made by representatives of General Electric Credit Corporation in October, November and December of 1964;

4. sales of repossessed merchandise by General Electric Credit Corporation in such a way as to increase the deficiency and liability of Grubbs;

5. improper repossession and releasing procedure allegedly followed by General Electric Credit Corporation;

6. a general conspiracy between General Electric Credit Corporation and General Electric Company in restraint of trade designed and calculated to produce various alleged results of such agreement being alleged to be in violation of Federal and State Anti-Trust Laws.

In such Third Amended Answer and Cross-Action Grubbs refers to nine judgments obtained against him from February 15, 1966 through December 13, 1966, including a judgment in favor of the United States of America dated July 1, 1966. This is the basis for making the United States of America a party to the cross-action by a reference to Rule 22. None of the other judgment holders were made parties or have been made parties by amended pleadings. The allegations regarding fear of multiple liability are doubtful in that the allegations show that Grubbs is fully obligated on all nine of the judgments.

Regarding the Response of Plaintiff General Electric Credit Corporation to the Cross-Action of Grubbs

Plaintiff contends that the unsworn pleading asserting failure of consideration was insufficient under Rule 93(j) of the Texas Rules of Civil Procedure.

In addition to its denials of the factual allegation said General Electric Credit Corporation further pleads:

1. That the claims based on libel or slander are barred by the one year statute of limitations, the allegations showing that the alleged slander occurred in

the fall of 1964 approximately two years before the Cross-Action was filed; and

2. that the claims in other respects were barred by the two year statute of limitations, this applying particularly to alleged conversion and tortious acts occurring prior to October of 1964.

Regarding the Cross-Action of the United States of America

The United States of America claims that its judgment lien is a prior, paramount and superior lien on the property of Grubbs. The method of making this determination among claimants that are not parties to the action is subject to doubt.

Against General Electric Credit Corporation and General Electric Company the United States of America alleges (1) that in May of 1965 Grubbs defaulted on his note to the First State Bank of Hallsville, Texas, in the original sum of $20,000.00 dated September 15, 1962; (2) that by reason of such default on June 16, 1966, the United States of America took judgment against Grubbs for $6,935.87; (3) that the default by Grubbs was directly induced and caused by various intentional acts of General Electric Credit Corporation and General Electric Company as their agents and employees; (4) that actual damages resulted to the United States of America; and (5) that the United States of America is entitled to recover punitive damages.

Regarding Responses of General Electric Credit Corporation to Cross-Action of the United States of America

In addition to denials of the factual allegations said General Electric Credit Corporation pleads for one year and two year statutes of limitations as a bar, pointing out that the claim of the United States of America based on

matters alleged to have occurred prior to December of 1964 was not filed until March 20, 1968. Said General Electric Credit Corporation also contends that there is no allegation that proper filing, indexing etc. have been done to constitute the judgment a lien or that the judgment is not collectible.

Proposed Witnesses for General Electric Credit Corporation

In its main case the Plaintiff expects to call as witnesses:

B. O. Robbins of Chattanooga, Tennessee

Howard Cole of Shreveport, Louisiana

Rebuttal witnesses will be called by said Plaintiff as may be necessary.

Witnesses of T. R. Grubbs

See Exhibit B attached.

Reference is made to the proposed Pre-Trial Order attached as Exhibit "B".

Witnesses for the United States of America

See said Exhibit B attached.

Regarding Positions of General Electric Company

Reference is made to the proposed pre-trial order submitted by counsel for General Electric Company, Exhibit "A".

Exhibits of the Plaintiff

Such exhibits are listed in Exhibit C attached.

Exhibits of T. R. Grubbs and the United States of America

Such exhibits are listed in Exhibit "B" attached, a part of the proposed Pre-Trial Order.

Other Provisions

The case will be tried before the Court without a jury. The probable length of trial is two days.

All parties may supplement the list of witnesses and exhibits at the trial for good cause shown. Each party is granted the right to call witnesses as may be necessary.

This pre-trial order may be modified at the trial or prior thereto, to prevent manifest injustice.

SIGNED this 28th day of October, 1969.

/s/ Joe J. Fisher
United States District Judge

Approved As to Form and Substance:

Hubert D. Johnson
Morris Harrell
C. Houston Abel
Bill J. Cornelius

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION, Plaintiff, vs. T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE, Defendant.	Civil Action No. 1273

MEMORANDUM OPINION WITH FINDINGS OF FACT AND CONCLUSIONS OF LAW

This suit was originally filed in the District Court of Marion County, Texas, on September 3, 1964, by General

Electric Credit Corporation against T. R. Grubbs, doing business as T. R. Grubbs Tire and Appliance. T. R. Grubbs was at that time a regularly franchised dealer for the General Electric Company in Jefferson, Texas. General Electric Credit Corporation provided the financing for customers of T. R. Grubbs who purchased General Electric products.

The cause of action sought to recover judgment on a promissory note executed by T. R. Grubbs in favor of General Electric Credit Corporation dated March 12, 1964, in the principal sum of $66,923.47. T. R. Grubbs pleaded a general denial and asserted as affirmative defenses a failure of consideration and fraud in the inducement. T. R. Grubbs further in October of 1966 asserted a cross-action against the Plaintiff, General Electric Credit Corporation, and against the General Electric Company. This cross-action alleged damages recoverable for alleged slander and conspiracy to put Grubbs out of business.

On November 1, 1967, T. R. Grubbs joined the United States as a party defendant in his cross-action and requested the State District Court to determine priorities on nine judgments pending against T. R. Grubbs including one in favor of the United States. On or about February 16, 1968, the United States duly filed its petition for removal and thereby removed the case to the United States District Court for the Eastern District of Texas, Marshall Division. The United States filed a cross-action seeking a determination that its judgment lien is a prior, paramount and superior lien on the property of T. R. Grubbs; furthermore the government alleged that default by T. R. Grubbs was occasioned by the wrongful acts of General Electric Credit Corporation and General Electric Company and that the government has thereby sustained actual damages for which it seeks to recover.

Three of the creditors of T. R. Grubbs who hold unpaid judgment liens recovered in state court have intervened in this Court praying that Plaintiff, General Electric Credit Corporation, take nothing by its suit against T. R. Grubbs and that their liens be declared prior and paramount to any judgment recovered by Plaintiffs.

The cause having been tried before the Court without a jury and the Court having considered the pleadings, the evidence and the briefs filed by the respective parties and having been fully advised in the premises, now makes its findings of fact and conclusions of law.

FINDINGS OF FACT

1.

T. R. Grubbs, doing business as T. R. Grubbs Tire and Appliance, was the duly authorized and franchised dealer for the General Electric Company in Jefferson, Texas, from 1955 until August 1964.

2.

Until August, 1964, General Electric Credit Corporation provided the floor plan financing for T. R. Grubbs and also provided financing to Grubbs' customers for General Electric Company products purchased from Grubbs.

3.

On or about March 12, 1964, T. R. Grubbs executed a note in the amount of $66,923.47 payable to General Electric Credit Corporation in monthly installments of $1,500.00. This note was executed after T. R. Grubbs had met with officials of General Electric Credit Corporation in Shreveport, Louisiana, at which meeting General Electric Credit Corporation determined that certain accounts of T. R. Grubbs' customers in the amount of $66,923.47 were uncollectable.

4.

The execution and delivery of the $66,923.47 note from T. R. Grubbs to General Electric Credit Corporation was conditioned upon the agreement and understanding that General Electric Credit Corporation would continue to purchase credit accounts submitted by Grubbs which were of reasonable quality and acceptable.

5.

The amount of the $66,923.47 note from Grubbs to General Electric Credit Corporation represented the amounts of financed accounts which General Electric Credit Corporation had "charged back" to T. R. Grubbs and had required that he pay.

6.

As a part of the agreement to execute and deliver the $66,923.47 note from T. R. Grubbs to General Electric Credit Corporation the "charged back accounts" represented by the note were thereafter the property of T. R. Grubbs and he had the right to own and collect the same and foreclose with respect to same.

7.

It was the understanding and agreement of T. R. Grubbs in executing the $66,923.47 note that it would be necessary for General Electric Credit Corporation to purchase Grubbs' customers credit accounts thereafter in order for Grubbs to be able to pay the monthly installments provided for in said note.

8.

General Electric Credit Corporation repudiated the agreement to continue accepting accounts sent in by T. R. Grubbs which repudiation of said agreement was made at

a time when T. R. Grubbs' note to General Electric Credit Corporation was current.

9.

The first installment on the $66,923.47 note was timely and properly paid by T. R. Grubbs while the $66,923.47 note was on a current status, and before the second payment became due, T. R. Grubbs sent accounts to General Electric Credit Corporation for their purchase in an amount more than sufficient to enable T. R. Grubbs to make the next ensuing payment on said note. These accounts were of reasonable quality but General Electric Credit Corporation refused to accept these accounts and although General Electric Credit Corporation later did purchase them, it refused to send T. R. Grubbs the money on them, instead "crediting" the amounts thereof to Grubbs' Reserve Account.

10.

The act of General Electric Credit Corporation in refusing to promptly purchase and pay T. R. Grubbs for the accounts submitted by him prior to the due date of the second installment on said note was a violation of the agreement and condition upon which said note was given and prevented T. R. Grubbs from being able to make the second installment or any further payment on said note.

11.

That General Electric Credit Corporation sent "stop payment" letters to the customers of T. R. Grubbs informing said customers not to pay T. R. Grubbs any more money and that such letters did not sufficiently distinguish between or explain the difference between the accounts owned by General Electric Credit Corporation and those owned by T. R. Grubbs.

12.

That the effect of the mailing of the stop payment letters by General Electric Credit Corporation to the customers of T. R. Grubbs was to cause said customers to stop paying Grubbs their obligations to him.

13.

That during the period from July 1964 to January 1965 the agents, servants and employees of General Electric Credit Corporation visited many of T. R. Grubbs' customers in his trade territory and stated or represented to said customers the following:

(A) That Grubbs had cheated and defrauded General Electric Credit Corporation and such customers and that General Electric Credit Corporation was going to "close him out."

(B) That Grubbs had double financed the merchandise they bought from him and had charged them for merchandise they had not purchased.

(C) That Grubbs had not sent their payments in to General Electric Credit Corporation and that the customer had not gotten credit for their payments and possibly still owed something to General Electric Credit Corporation.

(D) That they should not pay Grubbs anything any more.

(E) That Grubbs had embezzled money from the First Baptist Church of Jefferson, Texas.

(F) That the customers should let General Electric take their property and that the customers should refuse to pay Grubbs any more and that the customers should purchase new merchandise from Oney Butane & Appliance Company.

(G) That Grubbs was being "closed out" and in the future, they should trade with Oney Butane & Appliance Company.

(H) That their receipts showed that they had been overcharged by Grubbs and their receipts showed payments by them in excess of what they owed.

14.

The allegations made by General Electric Credit Corporation's agents to T. R. Grubbs' customers that Grubbs had cheated General Electric Credit Corporation and Grubbs' customers; that Grubbs had double financed merchandise, and that Grubbs had embezzled money from the First Baptist Church of Jefferson were false.

15.

The acts of General Electric Credit Corporation against T. R. Grubbs as found herein constituted unlawful interference by General Electric Credit Corporation with the business of T. R. Grubbs and illegal restraint of trade.

16.

The acts of General Electric Credit Corporation in refusing to purchase and pay for acceptable accounts submitted by T. R. Grubbs for financing after the execution of the note in the sum of $66,923.47 and General Electric Credit Corporation's interference with the attempt of Grubbs to collect on accounts which had been charged back to him constituted failure of consideration for said note.

17.

That after General Electric Credit Corporation had repudiated its agreement with T. R. Grubbs to continue to accept the accounts of Grubbs, it then repossessed the merchandise which it had delivered to him on his floor

plan arrangement thereby stripping T. R. Grubbs' store of practically all saleable merchandise and virtually terminating his business.

18.

That the acts of General Electric Credit Corporation in refusing to allow T. R. Grubbs to work, collect or foreclose on the accounts which had been charged back to him and merged into his note deprived T. R. Grubbs of property and funds to which he was legally entitled.

19.

The effect of the acts of General Electric Credit Corporation in taking possession of and selling or converting to its own use property of T. R. Grubbs' customers on which it had no mortgage or lien was to convert and deprive T. R. Grubbs of the value of the property; that General Electric Credit Corporation refused to let T. R. Grubbs know what merchandise it had repossessed on accounts of Grubbs' customers and refused to give him the privilege of purchasing such merchandise to thereby lessen his liability thereon; that T. R. Grubbs had accounts owing to him and his store privately which had not been assigned to General Electric Credit Corporation or anyone else amounting to substantial value which accounts he was prevented from collecting by reason of the unlawful acts of General Electric Credit Corporation as found herein.

20.

That the persons committing the acts described herein on behalf of General Electric Credit Corporation were the agents, servants and employees of General Electric Credit Corporation and at all said times were acting within the scope of their employment.

21.

The actionable wrongs committed by General Electric Credit Corporation against T. R. Grubbs and his injuries resulting therefrom occurred within two years of the filing of his cross-action.

22.

The same time General Electric Credit Corporation undertook to close out T. R. Grubbs' business and committed the acts herein found, the General Electric Company refused to sell T. R. Grubbs any more merchandise and so informed T. R. Grubbs, and at such time T. R. Grubbs was a franchised dealer for General Electric.

23.

At the same time as the acts of General Electric Credit Corporation found herein were occurring, the General Electric Company made a decision to refuse to renew T. R. Grubbs' franchise as a General Electric dealer, even though said franchise did not come up for renewal until several months later.

24.

At the time when the General Electric Company decided not to renew T. R. Grubbs' Dealer Franchise, said General Electric Company issued an immediately effective Dealer Franchise to Oney Butane & Appliance Company of Jefferson, Texas.

25.

After General Electric Credit Corporation closed out T. R. Grubbs' business, the General Electric Company had no further relationship with T. R. Grubbs but that all of its business relations thereafter were with Oney Butane & Appliance Company.

26.

That General Electric Credit Corporation is a wholly owned subsidiary of General Electric Company and all of the directors of General Electric Credit Corporation are officers or employees of the General Electric Company.

27.

That although the Court's findings in Nos. 22, 23, 24 and 25 do not reflect good faith on the part of General Electric Company, and the circumstances give rise to suspicious conduct which indicates that a conspiracy existed between General Electric Credit Corporation and General Electric Company to force T. R. Grubbs out of business, the Court cannot find as a fact from a preponderance of the evidence that General Electric Company entered into any fraud, scheme or conspiracy with General Electric Company to put T. R. Grubbs out of business or to restrain trade.

28.

That the United States of America has failed to establish any right of recovery against either Plaintiff General Electric Credit Corporation or Defendant General Electric Company based on any theory and particularly based on the theory that said Plaintiff General Electric Credit Corporation or Defendant General Electric Company singly or in concert unlawfully interfered with the contractual relations existing between said Defendant Grubbs.

29.

That Plaintiff General Electric Credit Corporation has failed to establish its right to recover a judgment against Defendant T. R. Grubbs on the note in the sum of $66,923.47 executed by T. R. Grubbs on March 12, 1964, for the reason that there was a failure of consideration for the execution

of said note and because of the false and fraudulent representations made by the Plaintiff, General Electric Credit Corporation, which induced Defendant, T. R. Grubbs, to execute said note; that said note is declared void; and further Cross-Plaintiff, T. R. Grubbs, has been damaged by the unlawful acts of the Cross-Defendant, General Electric Credit Corporation, in interfering with the business operations of Cross-Plaintiff, T. R. Grubbs, resulting and forcing him out of the electrical appliance business.

30.

That as a result of General Electric Credit Corporation's unlawful acts as found herein, T. R. Grubbs has been damaged in the sum of $20,000 in actual damages.

CONCLUSIONS OF LAW

1.

That Plaintiff, General Electric Credit Corporation, is not entitled to recover judgment against the Defendant, T. R. Grubbs on the note executed dated March 12, 1964, in the sum of $66,926.47, and that said note is declared void.

2.

That the Cross-Action of Cross-Plaintiff, T. R. Grubbs, is not barred by the one or two year statute of limitation contained in Articles 5524 and 5526 of the Revised Civil Statutes of Texas.

3.

That Cross-Plaintiff, T. R. Grubbs, suffered injuries which were proximately caused by the unlawful acts or conduct of General Electric Credit Corporation, acting through its agents, servants and employees.

4.

That as a result of the unlawful acts of Cross-Defendant General Electric Credit Corporation, through its agents, servants and employees in forcing the Cross-Plaintiff T. R. Grubbs out of business damaged the Cross-Plaintiff Grubbs in the loss of expected profits and other consequential damages, including loss of business reputation all in the sum of $20,000.00.

5.

That the United States of America is not entitled to recover anything against either General Electric Credit Corporation or General Electric Company.

6.

That Cross-Plaintiff T. R. Grubbs is not entitled to recover anything from the Defendant, General Electric Company.

7.

That the Court cannot determine priority of liens as among the various parties, including the United States of America claiming judgment liens against T. R. Grubbs.

Judgment will be entered for Cross-Plaintiff T. R. Grubbs in the sum of $20,000.00 with costs taxed against General Electric Credit Corporation; that Cross-Plaintiffs, T. R. Grubbs and the United States of America, take nothing as against the Defendant, General Electric Company, and denying all other relief prayed for by the parties seeking a determination of priorities of their liens against Defendant Grubbs.

ENTERED this 20th day of March, 1970.

/s/ Joe J. Fisher

United States District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

GENERAL ELECTRIC CREDIT CORPORATION,
Plaintiff,
vs.
T. R. GRUBBS, dba T. R. GRUBBS TIRE & APPLIANCE,
Defendant.

Civil Action No. 1273

JUDGMENT

BE IT REMEMBERED that on the 20th day of October, A.D., 1969, came on to be heard the above styled and numbered cause at the special date and time set by the Court for the trial of said cause on the merits and thereupon came and appeared all parties herein, in person or through their duly authorized attorneys of record, and all parties announced ready for trial, and a jury being waived by all parties and the case being submitted to the Court for determination, both as to law and facts. The Court thereupon proceeded to hear the evidence adduced by all parties and the argument of counsel, and the Court having requested and received briefs from parties which were duly considered, the Court thereupon found and made certain facts and conclusions of law which are filed in this cause and are here referred to; and the Court thereupon determined that the facts and the law were with the Cross-Plaintiff, T. R. Grubbs, as against the Cross-Defendant, General Electric Credit Corporation, and that all other relief sought by all parties herein should be denied, and it is therefore,

ORDERED, ADJUDGED and DECREED that the Cross-Plaintiff, T. R. Grubbs, have and recover, of and from the General Electric Credit Corporation, damages in the sum of Twenty Thousand and No/100 ($20,000.00) Dollars with interest at the rate of six (6%) percent per annum from date of Judgment until paid, and for all costs of suit. It is further ORDERED that the promissory note from T. R. Grubbs and wife, Syble Grubbs, to General Electric Credit Corporation in the sum of $66,923.47 which is dated March 12, 1964, and which is described in the petition of General Electric Credit Corporation on file herein, be and the same is hereby cancelled and held to be void and of no force or validity, and further that T. R. Grubbs recover nothing against either the General Electric Company and the United States recover nothing against either the General Electric Company or the General Electric Credit Corporation, and that the General Electric Credit Corporation recover nothing against T. R. Grubbs or T. R. Grubbs Tire and Appliance and further that the requests of parties herein for a determination of priority of liens is hereby denied, and that all relief not specifically granted herein is specifically denied.

RENDERED this the 10th day of April, A.D., 1970.

/s/ Joe J. Fisher
United States District Judge

OPINION OF UNITED STATES COURT OF APPEALS

(This is contained in Petitioner's Petition for Writ of Certiorari and will not be printed in this Appendix, see page A-1 of the Petition for Writ of Certiorari.)

Supreme Court, U.S.
FILED
AUG 20 1971
E. ROBERT SEAVER, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. 71-257

T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Petitioner,

vs.

GENERAL ELECTRIC CREDIT CORPORATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

No. _____

T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Petitioner,

vs.

GENERAL ELECTRIC CREDIT CORPORATION,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in this case on June 2, 1971.

OPINION BELOW

The opinion of the Court of Appeals is not yet reported. It is set forth in the appendix, as are the order of remand and the order denying rehearing.

JURISDICTION

The judgment of the Court of Appeals was rendered on June 2, 1971. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS RAISED

1. Where the case was removed from State Court to the U. S. Court by the U. S. Government (which was a third party lien claimant and cross plaintiff) and all parties consented to trial in the U. S. Court which proceeded to judgment on the merits in favor of Petitioner, should the case be remanded if it appears that the statute on which removal was based was not applicable, notwithstanding the fact that there is diversity, the suit was brought under the U. S. anti-trust statutes, and involved an agency of the U. S. Government?

2. Assuming the U. S. Government improperly removed the case, should the judgment on the merits in the U. S. Court fall and the case be remanded for retrial in the State Court, even though the suit (1) involves the U. S. anti-trust statutes, (2) involves a claim of tortious interference with the government's lien, (3) there is complete diversity, and (4) all parties consented to trial on the merits in the U. S. Court?

3. Does the U. S. Court have removal jurisdiction in a case where the U. S. Government is a defendant and cross plaintiff, even though the government does not bring itself within the provisions of a specific statute authorizing removal?

STATEMENT

1. Proceedings in the Trial Court.

This suit was for debt brought in State Court by General Electric Credit Corporation against T. R. Grubbs. Grubbs cross actioned against General Electric Credit Corporation and brought in General Electric Company asking damages under the federal and state anti-trust statutes, because of the destruction of his business by G.E.C.C. and G.E. in conspiracy. Grubbs then brought in the U. S. Government as a defendant, along with other parties claiming liens against him, in order to determine the priority of the liens. The U. S. Government cross actioned against G.E.C.C. and G.E. claiming tortious interference by them with its judgment lien against Grubbs, and violation of the anti-trust statutes, and the government removed the case to the U. S. Court. No party objected to removal. All parties pleaded in federal court, consented to the court's jurisdiction, and requested the court to proceed to trial on the merits. The trial resulted in Grubbs' recovery of $20,000.00 damages against G.E.C.C. for destruction of his business. G.E. was absolved. The U. S. Government was denied relief. The record showed that there was diversity (G.E.C.C. and G.E. being New York corporations and Grubbs being a resident of Texas), that the federal anti-trust statutes were involved, and that the U. S. Government was a defendant and cross plaintiff in the case.

2. Proceedings in the Court of Appeals.

The Court of Appeals raised the question of improper removal sua sponte. No party complained of it or urged it on appeal. The Court of Appeals required supplemental briefs on the subject of jurisdiction. These were filed and Petitioner pointed out in his brief the several different

grounds of jufisdiction in the U. S. Court other than the government's stated grounds for removal. The Court of Appeals held that 28 U.S.C. 1444 did not apply and remanded the case to the State Court. The Court of Appeals stated in its opinion that there was "no allegation of diversity or federal question", *although Petitioner repeatedly called their existence to the Court's attention* in his brief and petition for rehearing. The petition for rehearing was denied.

REASON FOR GRANTING THE WRIT

1. This case merits review by this Court on certiorari because the decision of the Court of Appeals is in direct conflict with the holdings of the Supreme Court in (1) *Baggs* v. *Martin*, (Sup. Ct.) 179 U.S. 106, 21 S. Ct. 109, 45 L. Ed. 155, (2) *John C. McKay* v. *Uinta Development Company*, (Sup. Ct.) 57 L. Ed. 1138, and *In re Albert Moore*, 52 L. Ed. 904, as well as numerous decisions of the other Courts of Appeal.

2. This case merits review by this Court on certiorari because the decision of the Court of Appeals, which deprives Petitioner Grubbs of his judgment for damages because of the error of the U. S. Government, is such an unjust decision as to be a substantial departure from the accepted and usual course of judicial proceedings and to call for the supervision of this Court.

3. This case merits review by this Court on certiorari because this Court needs to settle the question whether or not the mere involvement of the U. S. Government in a suit authorizes the removal of that suit to federal court, even though the facts of the case may not come within some specific removal statute.

ARGUMENT

I.

This Honorable Court has clearly answered the first "question for review" in the negative. It is settled by this Court's decisions that even though removal may have been imperfect or erroneous, still if the U. S. Court could have jurisdiction on other grounds such as diversity or federal question, and particularly if all parties consent to trial in the U. S. Court, the case should not be remanded to the State Court. We have that exact situation here, and the Court of Appeals decision to remand is in direct conflict with this Honorable Court's holdings in *Baggs* v. *Martin,* (Sup. Ct.) 179 U.S. 206, 21 S. Ct. 109, 45 L. Ed. 155, *John C. McKay* v. *Uinta Development Company,* (Sup. Ct.) 57 L. Ed. 1138, and *In re Albert Moore,* 52 L. Ed. 904, as well as numerous cases decided by the other Courts of Appeal. As stated by the Supreme Court in the *Moore* case, supra:

> "That the defendant consented to accept the jurisdiction of the United States court is obvious. . . . After the removal the plaintiff, instead of challenging the jurisdiction of the United States Court by a motion to remand, filed an amended petition in that court, signed a stipulation giving time to the defendant to answer, and then both parties entered into successive stipulations for a continuance of the trial in that court. Thereby the plaintiff consented to accept the jurisdiction of the United States Court, and was willing that his controversy with the defendant should be settled by a trial in that court. The mere filing of an amended petition was an appeal to that court for a trial upon the facts averred by him, as they might be controverted by the defendant. And this, as we have seen was followed by repeated recognitions of the jurisdiction of that court."

To the same effect is *Trayler* v. *Black, Sivalls & Bryson,* (CCA 8th) 189 F.2d 213, where the Court said:

> "Whether the procedure for removal actually pursued was statutorily allowable at the time it was followed may reasonably be doubted. However, the action was clearly removable. Title 28 U.S.C.A. 1332 (a) (1) and 1441 (a). And the failure to question, and the actual approval by the parties of, the procedure taken to achieve removal are sufficient to waive any 'modal and formal' infirmities in that procedure."

It may be said here, as it was in the above case that, "whether the procedure for removal was statutorily allowable or not may be doubted", but nevertheless, there was diversity and there was the cause of action involving the U. S. anti-trust laws, where federal jurisdiction is specifically granted by statute, and all parties voluntarily accepted the jurisdiction. Clearly, the U. S. Court's decision should stand, rather than requiring a long and expensive retrial in State Court.

As stated in *Lopata* v. *Handler,* (CCA 10th) 121 F.2d 939,

> "Where a suit is one of which a federal court may take jurisdiction, that is, a case which the plaintiff might properly bring in a federal court, and the defendant procures its removal from a state court, *although such removal is wholly unauthorized,* and the plaintiff acquiesces in such removal, the federal court acquires jurisdiction."

See also *Handley Mack Co.* v. *Godchaux Sugar Co.,* (CCA 6th) 2 F.2d 435, where it is said:

> ". . . jurisdiction will be retained where, as here, although the case *was not technically removable* under the statute, the court yet had jurisdiction over the subject-matter of the controversy, and the parties had fully consented to the federal jurisdiction and acted thereunder."

Petitioner pointed out in his supplemental brief that there were four different grounds for jurisdiction in the U. S. Court, any one of which made the case removable. They were: (1) diversity of citizenship, 28 U.S.C. 1332; (2) suits involving liens of the United States, 28 U.S.C. 2410; (3) federal question. See 28 U.S.C. 1331 and *U. S.* v. *Lee,* (Sup. Ct.) 106 U.S. 196, 27 L. Ed. 171; and (4) suits involving the U. S. anti-trust statutes, 15 U.S.C. 15, 15 U.S.C. 1. Section 1 specifically provides for jurisdiction when any person "shall be injured in his business or property by reason of anything forbidden in the anti-trust laws." This is exactly what was claimed in our case. It was held in *Knuth* v. *Erie Crawford Dairy Co.*, 395 F.2d 420, that where the complaint supported a federal claim based on violations of Title 15 U.S.C., pendent jurisdiction could be exercised over claims that the defendants violated state law by fraudulent conversion of plaintiff's money and by tortious interference with plaintiff's business. The cases of *Washington Prof. Basketball Corp.* v. *NBA*, 147 F. Supp. 154 and *Southside Theaters* v. *United West Coast Theater Co.*, 178 F.2d 648 are also authority on this point.

This doctrine is also enunciated in the Supreme Court case of *Baggs* v. *Martin*, 179 U.S. 206, 21 S. Ct. 109, 45 L. Ed. 155. Judge Baker's comment in *Toledo, St. Louis & Western Ry. Co.* v. *Perenchio*, 105 F. 472 seems to sum up the holdings as approved by this Honorable Court:

> ". . . within its limitations respecting subject matter, a federal court is a court of general jurisdiction. If organic power to hear the controversy exists, *it is immaterial when or how the parties get into court;* it is enough if they do come in and waive all the preliminaries to the submission of the controversy."

II.

The order to remand creates a serious injustice against the Petitioner Grubbs, because it allows what the Court of Appeals said was a mistake of law by the government, a third party which recovered nothing and suffered no liability, to undo a long and thorough trial on the merits and to destroy a well deserved recovery of damages by Grubbs.

This result, if allowed to prevail, most assuredly makes the innocent suffer. All parties consented to federal court jurisdiction and a trial on the merits. In a thorough trial, the government recovered nothing and suffered no liability. G.E., G.E.C.C. and T. R. Grubbs all had their positions and claims fully and finally adjudicated on the merits. Now because the government made a mistake of law, as held by the Court of Appeals, all this is to be taken away . . . Grubbs is to lose his recovery which was the culmination of years of work and great expense; the General Electric Company (which was exonerated) now is to be subjected to another trial, possibly leading to liability; and G.E.C.C. is to be put to another long and expensive trial without having an adjudication of its appellate points.

This seems neither correct nor just. If the government was wrong in removing the case, it, and not the rest of us, should suffer for its mistake. Surely, at this late date, all the effort, time and expense which have gone into this case should not go down the drain just because the government may have misinterpreted the law and the rest of us were not so adverse to being in the U. S. Court that we failed to object to the removal.

It is generally the rule that when litigants fail to object, they are bound by what is done. Here, if remand is ordered, the opposite will be true. Parties will be allowed to stand by in silence, and if the trial goes against them,

have another go at it in another forum. Surely this is not right, nor is it conducive to the fair and efficient administration of justice. It goes directly against our traditional concept of a litigant's "day in court".

This Honorable Court made a statement in *In re Moore*, supra, which has great significance here:

> "We have made these many quotations and references, not simply to establish the doctrine itself, *but to emphasize the widespread injurious results which may be expected to follow from now enforcing a different rule*; for if . . . an objection to the jurisdiction of a particular one of those courts cannot be waived and no consent can give jurisdiction, it is clear that many judgments have been rendered by those courts in reliance upon such a waiver, which will necessarily be held to be absolutely void, *and the litigation must be had over again in some other court, resulting possibly in different decisions through the disappearance of witnesses, the loss of testimony, or the running of the statute of limitations.*"

III.

This case merits review by this Court on certiorari because this Court needs to settle the question whether or not the mere involvement of the U. S. Government in a suit authorizes the removal of that suit to federal court, even though the facts of the case may not come within some specific removal statute.

So far as we can determine, this Court has not completely settled this question. There are cases to the effect that whenever the U. S. Government or its property or one of its agencies is involved in litigation, there is basis for federal jurisdiction and removal. There are other cases which seem to hold that this is not true, and that there is not any basis for federal jurisdiction unless there is a specific statute authorizing jurisdiction which the facts

bring the case within. Yet, a study of the U. S. statutes indicates that it is the intent of Congress to provide for federal jurisdiction in all cases involving the government or its agencies, because there is a statute for nearly every conceivable instance where the U. S. Government or its agencies can be involved. But, what about a case where the government does not bring its fact situation and claims exactly within the coverage of a specific federal statute authorizing jurisdiction? Is there jurisdiction merely because the interests or the property of the U. S. Government are involved?

We submit that the answer is "Yes", but there is a definite need for this Honorable Court to clearly express it.

The case of *U. S.* v. *Lee,* (Sup. Ct.) 106 U.S. 196, 27 L. Ed. 171 held:

> ". . . that *no case can arise in a state court,* where the *interests,* the *property,* the *rights* or the *authority* of the federal government may come in question, which cannot be removed into a Court of the United States under existing laws."

If that case means what it says, then our question must be answered in the affirmative and the Court of Appeals' order to remand is erroneous.

It is well settled that suits by or against federal corporations are removable by the corporation. *Osborn* v. *U. S. Bank,* (Sup. Ct.) 9 Wheat. 738, 6 L. Ed. 204; *Pacific Railroad Removal Cases,* (Sup. Ct.) 5 S. Ct. 1113, 15 U.S. 1, 29 L. Ed. 319; *Perpetual Bldg. & Loan Ass'n* v. *Series Directors of Equitable Bldg. & Loan Ass'n,* (CCA 1954) 217 F.2d 1, cert. den., 75 S. Ct. 599, 349 U.S. 911, 99 L. Ed. 1246. As stated in the *Pacific RR. Removal Cases,* supra:

> ". . . a suit by or against a corporation of the United States is a suit arising under the laws of the United States. . ."

That case cited the exhaustive opinion of Chief Justice Marshall in the *Osborn* case, supra, where, it has been said, the doctrine was settled once and for all.

If a suit against a corporation of the United States, in which the U. S. owns one half or more of the stock, is removable, *why is a case against the government itself not removable?* Particularly where the United States Government is both a defendant and a cross plaintiff seeking damages under the anti-trust laws, and the preservation and validity of its lien (a property right) is brought into question?

It is submitted that such a case is removable. If there is any doubt on this question, this Honorable Court should now settle this doubt.

For the foregoing reasons it is submitted that the petition for certiorari should be granted to review the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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By: .....
BILL J. CORNELIUS

APPENDIX A

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 29961

GENERAL ELECTRIC CREDIT CORPORATION,
Plaintiff-Appellant,

versus

T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Texas

---

(June 2, 1971)

Before GOLDBERG and DYER*, Circuit Judges, and GROOMS, District Judge.

GOLDBERG, Circuit Judge: A funny thing happened to this case on its way to trial. Through a series of errors all parties ended up in the wrong forum. Finding a complete absence of federal jurisdiction, we remand the case to the district court for remand to the state court from whence it was removed.

---

*Judge Dyer did not participate in the decision of this case.

Plaintiff General Electric Credit Corporation instituted this suit in a Texas state court, seeking judgment on a promissory note against defendant T. R. Grubbs. Grubbs by various pleadings asserted a cross-action against General Electric Credit Corporation, and impleaded General Electric Company as an additional defendant. Subsequently, Grubbs filed another petition naming the United States as a party defendant. In this petition Grubbs referred to nine judgments obtained against him, including one in favor of the United States. Alleging that he was in jeopardy because of adverse claims being pressed by the lien claimants and the United States, Grubbs prayed that the priority of the lien claimed by the United States be determined under the provisions of Rule 22, Fed. R. Civ. P., in order to avoid double or multiple liability. The other judgment holders, however, were not made parties to the suit.

The United States, upon being named as a party defendant under Rule 22, filed a petition for removal to the United States District Court for the Eastern District of Texas. Removal was granted, apparently under the provisions of 28 U.S.C.A. § 1444, which provides:

> "§ 1444. Foreclosure action against United States
>
> Any action brought under section 2410 of this title against the United States in any State court may be removed by the United States to the district court of the United States for the district and division in which the action is pending."

§ 2410(a) provides:

> "§ 2410. Actions affecting property on which United States has lien
>
> (a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named

a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter—

(1) to quiet title to,

(2) to foreclose a mortgage or other lien upon,

(3) to partition,

(4) to condemn, or

(5) of interpleader or in the nature of interpleader with respect to, real or personal property on which the United States has or claims a mortgage or other lien."

In sum § 2410 waives sovereign immunity and allows the United States to be named a defendant in an interpleader suit with respect to real or personal property on which the United States has or claims a mortgage or other lien, and § 1444 allows the United States to remove the suit to federal court when it is named a defendant in such a suit.

At the conclusion of trial before the district court, judgment was rendered against General Electric Credit Corporation on its suit against Grubbs on the promisssory note, and in favor of Grubbs on his cross claim against General Electric Credit Corporation. General Electric Company and the United States were dismissed from the suit. From this determination General Electric Credit Corporation appeals.

We need not detain ourselves with the merits of this controversy since we must at the outset, and on our own motion, recognize the total absence of federal jurisdiction. We note that there never has been any allegation of diversity of citizenship between the parties to this suit. Nor is there any basis for federal question jurisdiction. The sole ground alleged for federal jurisdiction in the in-

stant case rests on the government's right to remove under § 1444, since it was named a defendant in Grubbs' interpleader suit. We think it clear beyond peradventure, however, that removal jurisdiction based on § 1444 is justified *only* if a *viable interpleader* action is filed naming the United States as a party defendant. In the instant case we think that Grubbs' attempt to join the United States as a defendant under Rule 22 was obviously frivolous.

The interpleader rule, Rule 22, Fed. R. Civ. P., provides:

> "Interpleader
>
> (1) Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability. It is not ground for objection to the joinder that the claims of the several claimants or the titles on which their claims depend do not have a common origin or are not identical but are adverse to and independent of one another, or that the plaintiff avers that he is not liable in whole or in part to any or all of the claimants. A defendant exposed to similar liability may obtain such interpleader by way of cross-claim or counterclaim. The provisions of this rule supplement and do not in any way limit the joinder of parties permitted in Rule 20."

The requirement that the plaintiff "is or may be exposed to double or multiple liability" has always been interpreted to demand a showing that the plaintiff has been or may be subjected to adverse claims to a particular fund. *See* 3A J. Moore, Federal Practice ¶ 22.02. In the more common case the requisite adversity is provided when the stakeholder is faced with two or more claims which are mutually inconsistent; a decision in favor of one claimant necessarily requires a determination that the

other claimants are not entitled to any part of the fund. As the Supreme Court explained in *Texas* v. *Florida*, 1939, 306 U.S. 398, 406, 412, 59 S.Ct. 563, 83 L.Ed. 817, 825, 828:

> "The peculiarity of the strict bill of interpleader was that the plaintiff asserted no interest in the debt or fund, the amount of which he placed at the disposal of the court and asked that the rival claimants be required to settle in the equity suit the ownership of the claim among themselves. But as the sole ground for equitable relief is the danger of injury because of the risk of multiple suits when the liability is single, Farley v. Blood, 30 N. H. 354, 361; Bedell v. Hoffman, 2 Paige, 199, 200; Mohawk & H. River R. Co. v. Clute, 4 Paige, 384, 392; Atkinson v. Manks, 1 Cow. 691, 703; Story, Eq. Pl. 10th ed. §§ 291, 292, and as plaintiffs who are not mere stakeholders may be exposed to that risk, equity extended its jurisdiction to such cases by the bill in the nature of interpleader. The essential of the bill in the nature of interpleader is that it calls upon the court to exercise its jurisdiction to guard against the risks of loss from the prosecution in independent suits of rival claims where the plaintiff himself claims an interest in the property or fund which is subjected to the risk. The object and ground of the jurisdiction are to guard against the consequent depletion of the fund at the expense of the plaintiff's interest in it and to protect him and the other parties to the suit from the jeopardy resulting from the prosecution of numerous demands, to only one of which the fund is subject. While in point of law or fact only one party is entitled to succeed, there is danger that recovery may be allowed in more than one suit. Equity avoids the danger by requiring the rival claimants to litigate before it the decisive issue, and will not withhold its aid where the plaintiff's interest is either not denied or he does not assert any claim adverse to that of the other parties, other than the single claim, determination of which is decisive of the rights of all. Pacific Nat. Bank v. Mixter, 124 U. S. 721, 31 L. ed. 567, 8 S. Ct. 718; Provident Sav.

Life Assur. Soc. v. Loeb (C. C.) 115 F. 357; Sherman Nat. Bank v. Shubert Theatrical Co. (D. C.), 238 F. 225, affirmed in (C. C. A. 2d) 247 F. 256; Illingworth v. Rowe, 52 N. J. Eq. 360, 28 A. 456; Carter v. Cryer, 68 N. J. Eq. 24, 59 A. 233; 2 Story, Eq. Jur. 14th ed. § 1140; Story, Eq. Pl. 10th ed. § 297b; Chafee, Cases on Eq. Rem. 75 et seq.; 3 Daniell, Ch. Pl. & Pr. 6th Am. ed. 1572; Maclennan, Interpleader, 338 et seq. supra.

* * *

In the case of bills of peace, bills of interpleader and bills in the nature of interpleader, the gist of the relief sought is the avoidance of the burden of unnecessary litigation or the risk of loss by the establishment of multiple liability when only a single obligation is owing. These risks are avoided by adjudication in a single litigation binding on the parties."

Interpleader has more reecntly been allowed in a second situation where the claims against the plaintiff are not technically inconsistent in the sense noted above. In this situation the plaintiff stakeholder is allowed the benefits of interpleader if he has a strictly limited liability and the claims asserted, although not mutually exclusive, are in excess of the limited liability. In this situation the claims are adverse in the sense that as a practical matter all claims cannot be satisfied from the limited fund. *See, e.g., State Farm Fire & Casualty Co.* v. *Tashire*, 1967, 386 U.S. 523, 87 S.Ct. 1199, 18 L.Ed.2d 270.

Clearly, unless the plaintiff can demonstrate that he has been or may be subjected to claims adverse in either of the above respects, then he has failed to meet the requirements of the interpleader rule and the action must be dismissed. *Fulton* v. *Kaiser Steel Corp.*, 5 Cir. 1968, 397 F.2d 580; *duPont & Co.* v. *O'Keefe*, 7 Cir. 1966, 365 F.2d 141; *Bierman* v. *Marcus*, 3 Cir. 1957, 246 F.2d 200; *New York Life Ins. Co.* v. *Valz*, 5 Cir. 1944, 141 F.2d 1014. In the in-

stant case Grubbs satisfied neither standard. It is patently obvious that we do not have a situation where the party seeking interpleader relief is exposed to multiple liability on one obligation due to inconsistent claims. The cross-plaintiff Grubbs has not even asserted that he is not liable individually to each of the judgment holders, including the United States. Indeed, the record indicates that he very probably is liable to each of the judgment holders. Grubbs cannot, therefore, claim the benefits of Rule 22 interpleader to avoid multiple liability because he has not shown that in fact he is only singly liable. Nor does Grubbs qualify for the second type of adversity which has been found to justify interpleader relief. He cannot be said to stand in the position of a stakeholder whose strictly limited liability is subjected to claims which aggregately exceed the liability limit. It is apparent from the record that Grubbs, if liable at all, has unlimited liability. He is the primary debtor, not, for example, a surety with limited liability. The most that he could claim is that as a matter of fact his ability to pay is limited. This is an entirely different assertion, and we think it falls short of the requisite adversity necessary to entitle one to interpleader relief. *See Fulton* v. *Kaiser Steel Corp., supra,* at 583, where the court noted that interpleader should be denied if the claims do not exceed the maximum legal liability or if the stakeholder is "not the surety but the contract debtor himself."

We conclude, therefore, that Grubbs has totally failed to bring his case within either of the two situations in which interpleader actions are sanctioned. His suit against the United States should accordingly have been dismissed at the outset.

In this case the failure of Grubbs' interpleader action has more than the usual consequences because the very

jurisdiction of the court depended upon a determination that a viable interpleader action had been asserted. We think it manifest that mere pleading, calling for the joinder of the United States under Rule 22, was insufficient to confer federal jurisdiction under § 1444 if the claim was not one which came within the interpleader rule. *Wallach* v. *Cannon*, 8 Cir. 1966, 357 F.2d 557. As we have demonstrated, the attempted interpleader was entirely without justification under Rule 22.[1] As a result, the United States was never subjected to a viable suit in which property on which it had a lien was in jeopardy as provided in § 2410. Consequently, the district court and this court have no further jurisdiction over this case under the removal provisions of § 1444.

Interpleader is no surrogate for bankruptcy, receivership, and other creditor disputes. We have no present stake, no present holder, and a woefully incomplete conclave of creditors. The United States came on stage when called and moved the scene to a federal forum, but it had no real role in the drama, nor could it have. To premise federal jurisdiction on such a supernumerary position is untenable. The federal blanket just will not stretch that far.

We therefore remand this case to the district court with instructions that the case be remanded to the state court for appropriate disposition.

REMANDED.

---

1. Grubbs chose to frame his pleadings in terms of Rule 22 of the Federal Rules of Civil Procedure. The result would be the same if he had used Rule 43 of the Texas Rules of Civil Procedure which was itself derived from Rule 22, Fed. R. Civ. P.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1970

No. 29961

D. C. Docket No. CA 1273
GENERAL ELECTRIC CREDIT CORPORATION,
Plaintiff-Appellant,

versus

T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Defendant-Appellee.

Appeal from the United States District Court for the Eastern District of Texas

Before GOLDBERG and DYER*, Circuit Judges, and GROOMS, District Judge.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Texas, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of

*Judge Dyer did not participate in the decision of this case.

the said District Court in this cause be, and the same in hereby, remanded.

It is further ordered that plaintiff-appellant be condemned to pay one-half the costs on appeal to be taxed by the Clerk of this Court, and that defendant-appellee, be condemned to pay one-half of said costs.

June 2, 1971

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In the

Supreme Court Of The United States

OCTOBER TERM, 1971

No. 71-757

T. R. GRUBBS, D/B/A T. R. GRUBBS TIRE & APPLIANCE,
Petitioner,

v.

GENERAL ELECTRIC CREDIT CORPORATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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In the

Supreme Court Of The United States

OCTOBER TERM, 1971

No. 71-257

T. R. GRUBBS, D/B/A T. R. GRUBBS TIRE & APPLIANCE,
Petitioner,

v.

GENERAL ELECTRIC CREDIT CORPORATION,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

QUESTIONS PRESENTED

1. Whether the Court of Appeals was correct in holding that this case was improperly removed by the United States of America.

2. Whether the Court of Appeals was correct in holding that there are no other grounds upon which this case could have been removed.

STATUTES INVOLVED

28 U.S.C.A. §1441
28 U.S.C.A. §1444
28 U.S.C.A. §2410

ARGUMENT

1. The United States of America was joined as a party Defendant in this action by Petitioner for interpleader purposes comparable to interpleader under Rule 22 of the Federal Rules of Civil Procedure. The Petitioner attempted to establish an interpleader action involving the United States of America by alleging that he was in jeopardy because of adverse claims being pressed by the United States of America and eight other lien claimants, and by praying that the priority of the lien claimed by the United States be determined in a manner comparable to the provisions of Rule 22. The United States of America removed the case from the state court to a federal court on the basis of 28 U.S.C.A. §1444 and 28 U.S.C.A. §2410(a). 28 U.S.C.A. §1444 provides:

> Any action brought under section 2410 of this title against the United States in any State court may be removed by the United States to the district court of the United States for the district and division in which the action is pending.

28 U.S.C.A. §2410(a) provides:

> (a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be

named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter—

(1) to quiet title to,

(2) to foreclose a mortgage or other lien upon,

(3) to partition,

(4) to condemn, or

(5) of interpleader or in the nature of interpleader with respect to, real or personal property on which the United States has or claims a mortgage or other lien.

On appeal the Fifth Circuit Court of Appeals found that there was a complete absence of federal jurisdiction and concluded that the Petitioner had failed to file a viable interpleader action against the United States of America. Therefore, it was concluded that the case had been improperly removed under 28 U.S.C.A. §2410(a) and 28 U.S.C.A. §1444. It is clear that the Petitioner failed to demonstrate that he had been or might be subjected to adverse claims, either because he was exposed to multiple liability on one obligation due to inconsistent claims or because as a stakeholder with limited liability he was being subjected to claims which exceed in the aggregate the liability limit. The pleading showed that claims being asserted against the Petitioner are those of nine judgment holders including the United States of America. Petitioner did not deny the validity of any of the nine judgments nor did he deny that he was individually liable to each of the judgment holders. Petitioner was not, therefore, only

singly liable and entitled to claim the benefits of interpleader as under Rule 22 to avoid multiple liability. Nor was the Petitioner in the position of a stakeholder with limited liability. If Petitioner was liable at all, which he did not deny, he had unlimited liability as a principal debtor on each of the obligations for which judgments had been taken. The fact that he may have a limited ability to pay does not in any way affect the availability of the interpleader procedures.

Since the relief sought by Petitioner against the United States of America was sought wholly under the interpleader theory, the Petitioner's action against the United States of America should have been dismissed at the outset when he failed to plead a cause of action on a good faith interpleader theory. The removal by the United States of America was improper since no viable interpleader action was instituted against it that would justify removal under the provisions of 28 U.S.C.A. §2410(a)(5). As this suit was not within any of the other provisions of 28 U.S.C.A. §2410(a), the Court of Appeals was correct in remanding this suit to the federal district court with instructions that it be remanded to the state court from which it was removed.

2. The Court of Appeals based its decision entirely upon its findings that "the sole grounds alleged for federal jurisdiction in the instant case rests on the Government right to remove under Section 1444, since it was named a defendant in Grubbs' interpleader suit."

The Court of Appeals further stated that "there never has been any allegation of diversity of citizenship between the parties to this suit, nor is there any basis for federal question jurisdiction." In reply to the request of the Court of Appeals for supplemental briefs from all parties directed to the question of whether the district court properly assumed jurisdiction in this case and whether the case could have been removed under any other federal statute, Petitioner asserted for the first time that the district court had jurisdiction under 28 U.S.C.A. §1332 (diversity of citizenship), 15 U.S.C.A. §15 (suits under the United States anti-trust laws), 28 U.S.C.A. §1331 (suits involving federal questions), and 28 U.S.C.A. §1441 (the general removal statute). Petitioner continues to assert the applicability of each of these sections in his Petition for Rehearing and his Petition for Writ of Certiorari.

Admittedly, Petitioner and Respondent are citizens of different states. Petitioner is a citizen of the State of Texas, whereas Respondent is a New York corporation. Removal by the non-resident based on diversity of citizenship is expressly provided for in 28 U.S.C.A. §1441, which provides as follows:

> Sec. 1441 Actions generally removable.
>
> . . .
>
> (b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the

parties. *Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.* (Emphasis added.)

In the instant case the removal was not within the provisions of Section 1441. Petitioner, the defendant below, is a citizen of Texas, the State in which the Respondent brought its action. Respondent, the New York resident, did not seek the removal. Reference in the Petition for Certiorari to 28 U.S.C.A. §1332 is wholly irrelevant since Section 1332 relates to original jurisdiction of the United States District Courts and has no application to removal from state courts to federal courts.

The only possible ground for removal based on federal question jurisdiction is the allegation of Petitioner's Cross Action wherein he charged that Respondent and General Electric Company had committed acts in violation of the anti-trust laws of the United States. Under proper conditions such allegations might have provided a basis of original jurisdiction in a federal court action but they cannot be the basis for removal. Here Petitioner urged such claims in his cross-action in the state court. Obviously, a defendant-cross plaintiff cannot remove to a federal court on the basis of allegations contained in his cross action, since as to such cross action he is a plaintiff. It is also well established that a plaintiff cannot remove a suit to a federal court based on the allegations contained in a defendant's

cross action, whether the grounds for such removal be diversity of citizenship or the presence of a federal question. *See, e.g., Shamrock Oil & Gas Corporation v. Sheets*, 61 S. Ct. 868, 313 U. S. 100, 85 L. Ed. 1214, and *Hoyt v. Sears, Roebuck & Co.*, 130 F. 2d 636, *cert. denied* 63 S. Ct. 257, 317 U. S. 687, 87 L. Ed. 550.

After the case was removed to the federal court on the petition for removal of the United States of America, the United States of America filed a pleading in which it charged Respondent and General Electric Company with wrongfully and maliciously interfering with the Petitioner's performance of his contractual relationships with the United States of America. This type of damage claim asserted by the United States of America would have been within the original jurisdiction of a federal district court under 28 U.S.C.A. §1345. However, federal jurisdiction in removal cases must be tested as of the time that the removal from the state court to the federal court took place. Consequently, the filing of pleadings in the federal court subsequent to the removal of an action cannot be given consideration from the standpoint of whether the federal district court had jurisdiction in this matter. In *American Dredging Co. v. Local 25, Marine Div. Int. U. Op. Eng.*, 338 F. 2d 837 (3rd Cir., 1964) the court discussed this question at length. The *American Dredging Co.* case and many like it stand for the sound proposition that removal jurisdiction must be viewed from the standpoint of the pleadings in the state court when

the removal is attempted. The subsequent pleading by the United States of America filed by it for the first time in the federal court cannot be given consideration in deciding the question of whether the prior removal was proper or improper.

Respondent respectfully submits that there were no grounds upon which this suit could have been properly removed. Therefore the Court of Appeals in accordance with the provisions of 28 U.S.C.A. §1447, was correct in remanding this action to the United States District Court with instructions that the case be remanded to the state court for appropriate disposition.

CONCLUSION

The Writ of Certiorari on the points presented by Petitioner should be denied.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 71-257

T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Petitioner,

vs.

GENERAL ELECTRIC CREDIT CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 71-257

T. R. GRUBBS, d/b/a T. R. GRUBBS TIRE & APPLIANCE,
Petitioner,

vs.

GENERAL ELECTRIC CREDIT CORPORATION,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Court of Appeals is reported in 447 F.2d 286. It is contained in Petitioner's printed Petition for Writ of Certiorari, at page A1, Appendix A.

JURISDICTION

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254 (1). The judgment of the Court of Appeals was rendered on June 2, 1971. Petition for Writ of Certiorari was filed August 20, 1971, and granted December 7, 1971.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This appeal involves Art. 3, Sec. 2, Cl. 1 of the U. S. Constitution; 28 U.S.C. 2410; 28 U.S.C. 1444; 28 U.S.C. 1441; 28 U.S.C. 1331; 28 U.S.C. 1332; 15 U.S.C. 1; 15 U.S.C. 15; and incidentally, 28 U.S.C. 1337 and 28 U.S.C. 1345. These are contained in the Appendix A, infra.

QUESTIONS PRESENTED

I. Where this case was removed from State Court to the U.S. Court by the U.S. Government (which was a defendant lienholder in State Court and became a cross plaintiff in the U.S. Court) and all parties consented to trial in the U.S. Court which proceeded to judgment on the merits in favor of Petitioner, should the case be remanded now, if it appears that the statute on which removal was based was not applicable, even though there was diversity, the suit involved the U.S. anti-trust statutes, and involved the U.S. Government and its property rights?

II. Assuming the U.S. Government improperly removed the case, should the judgment on the merits in the U.S. Court fall and the case be remanded for retrial in the State Court, even though the suit (1) involves the U.S. anti-trust statutes, (2) involves a claim of tortious interference with the government's lien, (3) there is complete diversity, and (4) all parties consented to trial on the merits in the U.S. Court?

III. Does the U.S. Court have removal jurisdiction in a case where the United States is a defendant even though the United States does not bring itself within the provisions of a specific statute authorizing removal?

IV. Was this case removable under 28 U.S.C. 2410 and 1444, since the United States was made a party under that statute, and the controversy actually involved the validity, applicability and protection of the government's lien?

SUMMARY STATEMENT OF THE CASE

This suit was for debt brought in State Court by General Electric Credit Corporation against T. R. Grubbs. (Page 7 Appendix) Grubbs cross actioned against General Electric Credit Corporation (Page 14 Appendix) and brought in General Electric Company asking damages under the federal and state anti-trust statutes, because of the destruction of his business by G.E.C.C. and G.E. in conspiracy. Grubbs then brought in the U.S. Government (page 14 Appendix) as a defendant in order to determine the priority of the liens being claimed against him by the government and other parties. The U.S. Government removed the case to the U.S. Court (page 27 Appendix), and then the U.S. Government cross actioned against G.E.C.C. and G.E. (page 32 Appendix) claiming tortious interference by them with its judgment lien against Grubbs, and acts prohibited by the U.S. anti-trust statutes. No party objected to removal. All parties pleaded in federal court, consented to the court's jurisdiction, and requested the court to proceed to trial on the merits. The trial resulted in Grubbs' recovery of $20,000.00 damages against G.E.C.C. for destruction of his business. (Court's opinion, Findings of Fact and Conclusions of Law and Judgment, pages 76-89 Appendix) G.E. was absolved. The U.S. Government was denied relief. The record showed that there was diversity (G.E.C.C. and G.E. being New York corporations and Grubbs being a citizen of Texas), that the federal anti-trust statutes were involved, and that

the U.S. Government was a defendant and cross plaintiff in the case.

The Court of Appeals raised the question of improper removal sua sponte. No party complained of it or urged it on appeal. The Court of Appeals required supplemental briefs on the subject of jurisdiction, specifically asking argument on whether the removal was proper, and if not, could the case have been removed for other than the stated reason. Briefs were filed and Petitioner pointed out in his brief the several different grounds of jurisdiction in the U.S. Court other than the government's stated grounds for removal, which were 28 U.S.C. 2410 and 1444. The Court of Appeals held that 28 U.S.C. 2410 and 1444 did not apply and remanded the case to the State Court. The Court of Appeals stated in its opinion that there was "no allegation of diversity or federal question", *although Petitioner repeatedly called their existence to the Court's attention* in his brief and petition for rehearing. The petition for rehearing was denied.

SUMMARY OF ARGUMENT

I.

As the United States District Court which tried this case had cognizance of the subject matter and the parties, it was error for the Court of Appeals to remand the case to State Court even if removal was improper or unauthorized, since all parties consented to jurisdiction and trial on the merits by the U.S. Court and appealed to that court for relief and the determination of the entire controversy. *Baggs* v. *Martin*, S.Ct., 179 U.S. 206, 21 S.Ct. 109, 45 L.Ed. 155; *John C. McKay* v. *Uinta Development Company*, S.Ct., 229 U.S. 173, 57 L.Ed. 1138, and others.

Sustaining the U.S. Court's jurisdiction not only is in accord with the decisions of this Court, but conforms to the principles of common sense and basic justice.

II.

The U.S. District Court in this case had jurisdiction to hear the case on the following grounds:

A. Diversity of Citizenship. Petitioner Grubbs was a citizen of Texas and General Electric Credit Corporation and The General Electric Company were both New York corporations. The record sufficiently shows diversity (*Sun Printing Co.* v. *Edwards*, S.Ct., 194 U.S. 377, 48 L.Ed. 1027 and others), and Respondent concedes it (Page 5 Brief in Opposition to Writ).

B. United States anti-trust laws. Petitioner brought his action for damages under the U.S. anti-trust laws, 15 U.S.C. 1, 15 U.S.C. 15, and the United States, after it removed the case sought affirmative relief against General Electric Credit Corporation and General Electric Company by reason of actions prohibited by the United States anti-trust laws. *Parker* v. *Brown*, S.Ct., 317 U.S. 341, 63 S.Ct. 307, 87 L.Ed. 315; *Hart* v. *B. F. Keith Vaudeville Exchange*, S.Ct., 262 U.S. 271, 43 S.Ct. 540, 67 L.Ed. 977.

C. The presence of the United States as a party. The United States was sued as a defendant in State Court. By virtue of the United States Constitution Art. 3, Sec. 2, the U.S. Court had jurisdiction of the case. *Minnesota* v. *Hitchcock*, S.Ct., 185 U.S. 373, 46 L.Ed. 954. In addition, the United States filed a cross action seeking affirmative relief against G.E.C.C. and G.E. Therefore, the U.S. was a "plaintiff" within the meaning of 28 U.S.C. 1345 which provides that the U.S. Courts have jurisdiction of actions where the United States is a plaintiff.

D. The involvement of a property right of the United States. The United States was brought into the suit because of a judgment lien which it claimed was prior and superior to rights being claimed by others. Since a property right of the United States was in dispute, a federal question sufficient to give jurisdiction was present.

III.

As the U.S. Court had jurisdiction of this cause on the various grounds discussed herein, it had pendent jurisdiction to determine the entire controversy, even though it found against some of the federal issues or declined to pass upon them in its decision on the merits. *Township of Hillsborough* v. *Cromwell,* S.Ct., 326 U.S. 620, 90 L.Ed. 358, 66 S.Ct. 445, and others.

IV.

The mere presence of the United States as a party to this suit in State Court authorized the removal to the U.S. Court.

A. Federal courts have original jurisdiction of controversies to which the United States is a party. U. S. Constitution, Art. 3, Sec. 2. 28 U.S.C. 1441 provides that any suit brought in State Court of which the U.S. Courts have original jurisdiction, may be removed by the defendant. This applies to the case at bar, since the United States was a party defendant in State Court. Any case in State Court in which the interests, the property, the rights or the authority of the federal government may come into question, may be removed to the U.S. Court. *U. S.* v. *Lee,* S.Ct., 106 U.S. 196, 27 L.Ed. 171.

B. The presence of the federal government as a party necessarily involves a federal question, since the rights,

titles, privileges and authority of the U.S. Government are all created by, depend upon, and are regulated by, U.S. laws. Dissenting Opinion, *National Mutual Ins. Co.* v. *Tidewater Transfer Co.*, S.Ct., 337 U.S. 582, 93 L.Ed. 1556.

V.

This case was properly removed by the United States under 28 U.S.C. 2410 and 1444.

A. Sec. 1444 of 28 U.S.C. provides that any action "brought" under Sec. 2410 may be removed by the United States. This action was brought under Sec. 2410. The Court of Appeals ruling that Petitioner did not sustain his action under 2410 and therefore the U.S. Court did not have jurisdiction, confuses "jurisdiction" with "decision on the merits". The action under 2410 conferred removal jurisdiction, whether sustained on the merits or not. *Hart* v. *B. F. Keith Vaudeville Exchange*, S.Ct., 262 U.S. 271, 43 S.Ct. 540, 67 L.Ed. 977. The basis for federal jurisdiction is determined from the allegations of the complaint, not the determination on the merits. *Pacific Electric Ry. Co.* v. *Los Angeles*, 194 U.S. 112, 48 L.Ed. 896.

B. In addition, the U.S. court had jurisdiction under 28 U.S.C. 2410 and 1444 because the consent to sue the United States granted by 2410 is conditioned on the absolute removal privilege granted by 1444, and to hold that the federal court has jurisdiction only if the claim under 2410 is well founded, is to force the United States to a determination on the merits by the State Court. At any rate, since the United States removed the case, and then sought affirmative relief in the U.S. court, jurisdiction became conclusively established. *Hood* v. *U. S.*, (CCA 9th) 256 F.2d 522.

C. Removal by the United States under 28 U.S.C. 2410 and 1444 was proper, since the real substance of the claim against the United States was within the purview of 2410 since there was involved the disputed priority of the government's lien, and the ownership and preservation of property on which the government claimed a lien.

ARGUMENT

I.

As the U.S. District Court in the case at bar had the organic power to hear the controversy, it was error to remand the case to State court even if removal was improper, since all parties consented to trial on the merits by the U.S. court and appealed to that court for relief and the determination of the entire controversy. *Baggs* v. *Martin*, S.Ct., 179 U.S. 206, 21 S.Ct. 109, 45 L.Ed. 155; *John C. McKay* v. *Uinta Development Co.*, S.Ct., 57 L.Ed. 1138, 229 U.S. 173; *In re Albert Moore*, S.Ct., 209 U.S. 490, 28 S.Ct. 585, 52 L.Ed. 904; *Kreigh* v. *Westinghouse, Church, Kerr & Co.*, S.Ct., 214 U.S. 249, 29 S.Ct. 619, 53 L.Ed. 984; *French* v. *Stewart*, S.Ct., 89 U.S. 231, 22 Wall. 238, 22 L.Ed. 584; *Pacific Ry. Co.* v. *Ketchum*, S.Ct., 101 U.S. 289, 25 L.Ed. 932; *Trayler* v. *Black, Sivalls & Bryson*, (CCA 8th) 189 F.2d 213; *Handley Mack Co.* v. *Godchaux Sugar Co.*, (CCA 6th) 2 F.2d 435; *Toledo St. Louis and Western Ry. Co.* v. *Perenchio*, 205 F. 472, cert. den., 231 U.S. 745, 58 L.Ed. 464; *Bailey* v. *Texas Co.*, (CCA 2nd) 47 F.2d 153.

The case of *John C. McKay* v. *Uinta Development Co.*, S.Ct., 229 U.S. 173, 57 L.Ed. 1138 is closest in point with our case as to the facts. The question certified to this Honorable Court in that case by the 8th Circuit Court and this Court's answer clearly illustrate the rule:

"Assuming that the removal at the instance of Mackay was not in conformity with the removal statute, and assuming that, as respects his claim against the Development Company, all the jurisdictional elements were present which were essential to enable the circuit court to take cognizance thereof in that court, and assuming that in such an action the Development Company lawfully could have set up its claims as a counterclaim and thereby have entitled the court to take cognizance thereof, did the parties, by appearing in the circuit court and there litigating both claims to a final conclusion in a single cause, without any objection to the jurisdiction of the court or to the manner in which its jurisdiction was invoked, enable that court to take cognizance of the controversy and to proceed to a final judgment therein with like effect as if they had invoked the jurisdiction of that court in the first instance through an action commenced therein by Mackay upon his claim, and through the interposition by the Development Company of its claim as a counterclaim in that action?

This question must be answered in the affirmative."

In our case, no question was ever raised by any party as to lack of jurisdiction, but all appealed to the Court for a determination of their claims on the merits.

The extent to which all parties in the case at bar appealed to and recognized the jurisdiction of the U.S. District Court may be noted by looking at the Clerk's docket entries and the instruments shown in the appendix. A similar situation was emphasized by Justice Brewer in this Honorable Court's decision in *In re Moore*, S.Ct., 209 U.S. 490, 52 L.Ed. 904, as he stated:

"That the defendant consented to accept the jurisdiction of the United States court is obvious . . . After the removal the plaintiff, instead of challenging the jurisdiction of the United States Court by a motion to remand, filed an amended petition in that court, signed a stipulation giving time to the defendant to answer, and then both parties entered into successive stipulations for a continuance of the trial in that court. Thereby the plaintiff consented to accept the jurisdiction of the United States Court, and was willing that his controversy with the defendant should be settled by a trial in that court. The mere filing of an amended petition was an appeal to that court for a trial upon the facts averred by him, as they might be controverted by the Defendant. And this, as we have seen was followed by repeated recognitions of the jurisdiction of that court."

The Court continued by saying:

". . . the defendant applied for a removal of the case to the Federal Court. Thereby he is foreclosed from objecting to its jurisdiction."

"In like manner, after the removal had been ordered, the plaintiff elected to remain in that court, and he is equally with the defendant, precluded from making objection to its jurisdiction."

Several well reasoned decisions of the Circuit Courts of Appeal have followed and applied the rule approved by this Honorable Court in *McKay* v. *Uinta*, supra, and *In re Moore*, supra, and *Baggs* v. *Martin*, supra. In *Handley Mack Co.* v. *Godchaux Sugar Co.*, CCA 6th, 2 F.2d 435, the Court said:

". . . jurisdiction will be retained where, as here, although the case *was not technically removable* un-

der the statute, the court yet had jurisdiction over the subject-matter of the controversy, and the parties had fully consented to the federal jurisdiction and acted thereunder."

Judge Baker's comment in *Toledo, St. Louis & Western Ry. Co.* v. *Perenchio*, 205 F. 472, cert. denied, 231 U.S. 745, 58 L.Ed. 464, seems to sum up the decisions as approved by this Honorable Court:

". . . within its limitations respecting subject matter, a federal court is a court of general jurisdiction. If organic power to hear the controversy exists, *it is immaterial when or how the parties get into court*; it is enough if they do come in and waive all the preliminaries to the submission of the controversy.

American Fire and Casualty Co. v. *Finn*, S.Ct., 341 U.S. 6, 95 L.Ed. 702, is clearly distinguishable since there this Court found that in that case the U.S. Court could not have had jurisdiction even in the posture it had at the time of judgment. In our case, the U.S. Court had original jurisdiction of the case both at removal and throughout the proceedings.

Not only is the rule above stated approved by the cases, but it is supported by logic and common sense and it conforms to the principles of basic fairness and justice. Remand in this case would allow what the Court of Appeals said was an erroneous assumption by the government, which recovered nothing and suffered no liability, to undo a long and thorough trial on the merits to which all parties consented, and to destroy a well deserved recovery of damages by Petitioner Grubbs. Such a result would be neither fair nor logical. Parties cannot create jurisdiction by consent, but if the Court has cognizance of the subject matter or the parties, the parties can waive

all other jurisdictional prerequisites. As stated by this Honorable Court in *Pacific Ry. Co.* v. *Ketchum,* S.Ct., 101 U.S. 289, 25 L.Ed. 932.

> "Consent cannot give the Courts of the U.S. jurisdiction, but it may bind the parties and waive previous errors, *if when the Court acts,* jurisdiction has been obtained."

In our case, even if removal was, as said in *Lopata* v. *Handler,* (CCA 10th) 121 F.2d 939, "wholly unauthorized" yet the U.S. Court had organic power to hear the controversy on several grounds, and it clearly had jurisdiction when it acted. In a thorough trial, after one year and eight months in the U.S. Court, with all parties consenting to the jurisdiction, the claims of all parties were adjudicated on the merits. Now, if remand is ordered, all this will be taken away—Grubbs will lose his recovery which was the culmination of years of work and great expense; the General Electric Co. which was exonerated, now will be subjected to another trial, possibly resulting in liability; and G.E.C.C. will be put to another long and expensive trial without having an adjudication of its appellate points.

Such a result would cause the innocent to suffer. If the Government improperly removed the case, then it, and not the rest of us, should suffer the consequences. Surely at this late date, all the effort, time and expense which have gone into this case should not go down the drain just because an error may have been made in the Government's removal and the rest of us were not so adverse to being in the U.S. Court that we failed to object to the removal.

To remand this case now would go against our traditional concept of a litigant's "day in court". It is generally true that when litigants fail to object, they are

bound by what is done with their consent. Here, if remand is ordered, the opposite will be true. Parties will be allowed to stand by in silence, and now that the trial has gone against them, have another go at it in another forum. The undesirable consequences of such a situation were emphasized by this Honorable Court in *In re Moore*, supra, when it said:

> "We have made these many quotations and references, not simply to establish the doctrine itself, *but to emphasize the widespread injurious results which may be expected to follow from now enforcing a different rule*; for if . . . an objection to the jurisdiction of a particular one of those courts cannot be waived and no consent can give jurisdiction, it is clear that many judgments have been rendered by those courts in reliance upon such a waiver, which will necessarily be held to be absolutely void, and the *litigation must be had over again in some other court, resulting possibly in different decisions through the disappearance of witnesses, the loss of testimony, or the running of the statute of limitations.*"

II.

Respondent concedes in its answer to the Petition for Writ, that the U.S. Court had original jurisdiction of the case at bar. That being true, the case falls squarely within the rule that jurisdiction should be sustained even if removal was improper or unauthorized.

In this case, the U.S. Court had jurisdiction of or the organic power to hear the case on several grounds:

A. Diversity of Citizenship. 28 U.S.C. 1332 provides that the U.S. Courts shall have original jurisdiction of all civil actions between citizens of different states. In the case at bar, Petitioner Grubbs was a citizen of

Texas and G.E. and G.E.C.C. were citizens of New York. Respondent admits the diverse citizenship (Page 5, Brief in Opposition to Petition for Writ). The pleadings, answers to Interrogatories and testimony all confirm it. (See Plaintiff G.E.C.C.'s original Petition, Page 7 Appendix; Answers to Interrogatories, Page 67 Appendix, and transcript of testimony, Appendix below).

Since the record showed diversity, there was no necessity that there be any formal allegation of it. *Sun Printing Company* v. *Edwards*, S.Ct., 24 S.Ct. 696, 194 U.S. 377, 48 L.Ed. 1027; *Gordon* v. *Third National Bank*, S.Ct., 12 S.Ct. 657, 184 U.S. 97, 36 L.Ed. 360. Of course, the jurisdictional amount is clearly established by the monetary and damage claims contained in the pleadings.

The addition of other parties who were judgment creditors of Petitioner Grubbs, after the case was in the U.S. Court, did not operate to defeat jurisdiction on the ground of diversity. They were not real parties to the controversy between Grubbs and G.E.C.C. and G.E., but were similar to interpleaders, and the Court's ancillary jurisdiction would apply to them at any rate. See *Wichita Railroad & Light Co.* v. *Public Utilities Commission of Kansas*, S.Ct., 260 U.S. 48, 67 L.Ed. 124; *Stewart* v. *Dunham*, S.Ct., 5 S.Ct. 1163, 115 U.S. 61, 29 L.Ed. 329.

B. U.S. Anti-Trust Laws. The amended answer and cross action filed by Petitioner Grubbs *before removal*, pleaded a cause of action for damages against G.E.C.C. and G.E. under the United States (15 U.S.C. 1; 15 U.S.C. 15) anti-trust statutes, as well as the Texas Anti-Trust Statutes. (Appendix, Page 10). The cross action filed by the U.S. Government against G.E.C.C. and G.E. after removal, which was its first opportunity to plead affirmatively, pleaded an action under the U.S. Anti-Trust Laws, to the effect that G.E.C.C. and G.E., acting in un-

lawful concert, maliciously and intentionally prohibited Grubbs from carrying on his business and interfered with the performance by Grubbs of his obligation to the U.S. Government. (Appendix, Page 32).

The Courts of the United States are given original jurisdiction of suits arising under the U.S. anti-trust laws. Title 15 U.S.C. 15 provides that any person injured in his business or property by anything forbidden in the anti-trust laws, may resort to the U.S. Courts for relief. In addition, 28 U.S.C. 1337 provides that the U.S. Court have original jurisdiction of actions involving the laws protecting trade and commerce against restraints and monopolies.

The jurisdiction of U.S. Courts in cases seeking relief under the anti-trust laws is too plain to require the citation of authorities, but the cases of *Parker* v. *Brown*, S.Ct. 317 U.S. 341, 63 S.Ct. 307, 87 L.9d. 315; *Hart* v. *B. F. Keith Vaudeville Exchange*, S.Ct., 262 U.S. 271, 67 L.Ed. 977, 43 S.Ct. 540; and *Binderup* v. *Pathe Exchange*, S.Ct., 263 U.S. 291, 44 S.Ct. 96, 68 L.Ed. 308 illustrate the applicability of the rule to cases where some wrongs similar to these asserted in our case were present.

It appears that even if jurisdiction of the U.S. Courts were not specifically given by statute in cases involving the anti-trust laws, such jurisdiction would be proper anyway on the general basis of federal question. This is because cases seeking to recover by reason of activities which are restricted or governed by U.S. law involve a federal question sufficient to give the U.S. Courts cognizance of such cases. See *Great Northern Ry. Co.* v. *Galbreath Cattle Co.*, S.Ct., 70 L.Ed. 854, 271 U.S. 99: *Southern Pacific Ry. Co.* v. *Frank Stewart*, S.Ct., 62 L.Ed. 472, 245 U.S. 562.

C. The presence of the U. S. Government as a Party. The Constitution of the U.S. provides that the judicial

power of the U.S. shall extend to controversies to which the United States shall be a party. (Art. 3, Sec. 2). Even though removal may have been improper, the presence of the U.S. Government as a party gave the U.S. Court cognizance of the case, and jurisdiction was properly retained where all parties consented to it. See *Minnesota* v. *Hitchock*, S.Ct., 185 U.S. 373, 46 L.Ed. 954; *Monaco* v. *Mississippi*, S.Ct., 292 U.S. 313, 78 L.Ed. 1282.

In addition, 28 U.S.C. 1345 provides that the U.S. Courts shall have original jurisdiction of all civil suits commenced by the United States. In the case at bar, the United States sued G.E.C.C. and G.E. for damages for unlawful interference with its contract with Petitioner Grubbs, alleging an unlawful action in concert to prohibit his conducting his business at a profit. (Appendix, Pages 32 & 50). Although this action was labeled a "cross action" it was actually an independent cause of action for affirmative relief, initiated by the U.S. against parties who were not suing the U.S. Therefore, in reality, the United States was the "plaintiff" in that cause of action. It is well settled that the U.S. Courts are not bound by the designation or alignment of parties in State Court, but they will make that determination for themselves based upon the real controversy and the nature of the relief sought. Since the U.S. Government was seeking affirmative relief in a new action instituted initially by it, it seems that it would be in the case as a "plaintiff" within the meaning of 28 U.S.C. 1345. See *Erickson* v. *U.S.*, S.Ct., 264 U.S. 246, 68 L.Ed. 661.

D. The involvement of a property right of the U.S. Government. In our case, the U.S. Government was brought in upon the assertion that it was claiming that its lien against the property of Grubbs was prior and superior to all others. (Appendix, Page 10 et seq.). The

U. S. Government confirmed this as it asserted in its pleadings that it "has a prior and superior claim against any and all assets or property presently in the possession of T. R. Grubbs, or which he might acquire in the future" by virtue of its judgment against Grubbs (Appendix, Pages 32 & 50), and that such judgment lien was "prior and superior to all other claims or liens asserted by other parties to this proceeding." (Appendix, Pages 32 & 50). General Electric Credit Corporation was then a party to the proceeding and there was involved its action in taking possession of various items of property belonging to, or in the possession of Grubbs, asserting the right to sell such property as in foreclosure. As the case involved a property right of the U.S. Government, and the applicability of its lien to certain property, the U.S. Court had cognizance of the case on that basis.

III.

As the U.S. District Court had jurisdiction on the various grounds discussed previously, it had pendent jurisdiction to determine the entire controversy, even though it found against some of the federal issues or declined to pass upon them, in its determination on the merits.

Township of Hillsborough v. *Doris Cromwell*, S.Ct., 326 U.S. 620, 90 L.Ed. 358, 66 S.Ct. 445; *Siler* v. *Louisville and N. R. Co.*, S.Ct., 213 U.S. 175, 29 S.Ct. 458, 53 L.Ed. 753; *Wichita Ry. & Light Company* v. *Public Utilities Commission of Kansas*, S.Ct., 260 U.S. 48, 67 L.Ed. 124

Cases applying the rule as approved by this Honorable Court, but with fact situations closer to ours, are *Southside Theaters* v. *United West Coast Theater Company*, CCA 9th, 178 F.2d 648 and *Knuth* v. *Erie-Crawford Dairy Co-op.*, 395 F.2d 420, which held that where the complaint stated a federal claim based on violation of the anti-trust laws,

pendent jurisdiction could be exercised over claims that the defendants violated state law by fraudulent conversion of plaintiff's money and by tortious interference with plaintiff's business.

IV.

Petitioner submits that the mere presence of the United States as a party in this suit in State Court authorized the removal of the case to the U.S. Court by the United States. If there is doubt on this question, it should be settled by this Honorable Court.

A. The U.S. Courts have original jurisdiction of cases where the U.S. Government is a party. U.S. Constitution, Art. 3, Sec. 2. This is true whether the U.S. is a plaintiff or defendant. *Glidden* v. *Zdanok,* S.Ct., 370 U.S. 530, 8 L.Ed.2d 671, 82 S.Ct. 1459; *Monaco* v. *Mississippi,* S.Ct., 292 U.S. 313, 78 L.Ed. 1282; *Minnesota* v. *Hitchcock,* S.Ct., 185 U.S. 373, 46 L.Ed. 954.

Sec. 1441 of Title 28 U.S.C. provides that ". . . any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant. . . ."

This case was a "civil action brought in a State Court." Because the United States was a party, the U.S. Courts had original jurisdiction. The United States was a "defendant." Therefore, it could have removed the case on those grounds. If it removed for the wrong reason, that was a waivable irregularity.

Sec. (b) of Sec. 1441 would not seem to change this proposition, since its intent was obviously to delineate between diversity and all other removable cases, and a suit against the United States would be "under the Constitu-

tion, treaties or laws of the U.S." in the context of that section.

This construction seems to be reasonable and consistent with the intent of Congress, as well as the courts. A search of the U.S. Statutes indicates that Congress intended that all actions involving the United States or its property, its agencies, its rights or its authority be removable to the U.S. Courts. And, as stated by this Honorable Court in *United States* v. *Lee,* S.Ct., 106 U.S. 196, 27 L.Ed. 171:

> ". . . that *no case can arise in a state court,* where the *interests,* the *property,* the *rights* or the *authority* of the federal government may come in question, *which cannot be removed* into a Court of the United States under existing laws."
>
> "In all cases, therefore, where such questions can arise, they are to be decided, *at the option of the parties representing the U.S.,* in courts which are the creation of the Federal Government."

B. The presence of the United States as a party of itself involves a federal question authorizing removal under 28 U.S.C. 1441, since the rights, titles, privileges and authority of the U.S. Government all depend upon and are created and regulated by U.S. laws. For this obvious reason, cases involving agencies and corporations of the United States are removable. *Pacific Ry. Removal Cases,* S.Ct., 5 S.Ct. 1113, 15 U.S. 1, 29 L.Ed. 319; *Osborne* v. *United States Bank,* S.Ct., 9 Wheat. 738, 6 L.Ed. 204. Is a case involving the U.S. Government any less a federal question?

As stated by Chief Justice Vinson in the dissent joined in by Justice Douglas in *National Mutual Ins. Co.* v. *Tide-*

water Transfer Co., S.Ct., 337 U.S. 582, 93 L.Ed. 1556, comment at page 1594,

> "Since any right of action against the U.S. is completely and wholly dependent upon whether an Act of Congress has authorized the suit . . . a question arising under the laws of the United States, . . . is clearly presented by any claim against the federal government."

V.

This case was properly removed by the U.S. Government under 28 U.S.C. 1444.

A. Sec. 1444 of 28 U.S.C. provides that any action "brought" under 28 U.S.C. 2410 against the United States in any State Court may be removed. It is undisputed that this action was "brought" against the U.S. under Sec. 2410. The Court of Appeals in effect held that Petitioner failed to establish his action under 2410 and that therefore the U.S. Court did not have jurisdiction of it. In this, the Court of Appeals fell into error, confusing *jurisdiction to "hear" a claim*, with *the establishment of that claim on the merits.*

Jurisdiction is the power to hear a claim and determine if it is well founded or not - - -not just the power to hear it *if it is well founded.* As stated by Justice Holmes in *Hart* v. *B. F. Keith Vaudeville Exchange*, S.Ct., 262 U.S. 271, 43 S.Ct. 540, 67 L.Ed. 977,

> "The jurisdiction of the District Court is the only matter to be considered on this appeal. That is determined by the allegations of the bill and usually, if the bill or declaration makes a claim that, if well founded, is within the jurisdiction of the court, it is within that jurisdiction, whether well founded or not."

See also *Binderup* v. *Pathe Exchange*, S.Ct., 263 U.S. 291, 44 S.Ct. 96, 68 L.Ed. 314, where this Honorable Court through Justice Sutherland said,

> ". . . jurisdiction cannot be made to stand or fall upon the way the court may chance to decide an issue as to the legal sufficiency of the facts alleged any more than upon the way it must decide as to the legal sufficiency of the facts proven. Its decision either way upon either question, is predicated upon the existence of jurisdiction, not upon the absence of it."

And, as stated by this court in *Montana-Dakota Utilities Co.* v. *NW Public Service Commission*, S.Ct., 341 U.S. 246, 95 L.Ed. 912,

> "If the complaint raises a federal question, the mere claim confers power to decide that it has no merit, as well as to decide that it has."

Jurisdiction is the authority to decide the case either way. Per Justice Holmes in *The Fair* v. *Kohler Die & Specialty Co.*, S.Ct., 228 U.S. 22, 57 L.Ed. 716. See also *Erickson* v. *United States*, S.Ct., 264 U.S. 246, 68 L.Ed. 661.

The nature of the claim as justifying federal jurisdiction, is determined from the bill or complaint, not on the facts as they turn out. *Pacific Electric Ry. Co.* v. *Los Angeles*, S.Ct., 194 U.S. 112, 48 L.Ed. 896; *Mosher* v. *City of Phoenix*, S.Ct., 287 U.S. 29, 77 L.Ed. 148.

In our case, there was a substantial claim under 28 U.S.C. 2410. The action against the United States was "brought" under the provisions of that section and the United States confirmed the matter when it pleaded rights and priorities thereunder (Appendix, Page 14, and Pages 32 and 33). Therefore, the case was properly removed to the U.S. Court.

B. In addition, this cause was removable under 28 U.S.C. 1444 because the consent to sue granted by 28 U.S.C. 2410 is expressly conditioned on the absolute removal privilege granted the United States under 1444. To hold otherwise would create an intolerable result, for if a party can sue the United States in a State Court *as expressly allowed in 2410,* but the government cannot remove unless the claim is established as being well founded, the government is forced to submit to a determination of the merits by the State Court.

Both Respondent in its brief on Petition for Writ and the Court of Appeals in its opinion, stated that since the Petitioner's claim under 2410 was not well founded, it should have been "dismissed at the outset." By the State Court? If so, there would have been a determination on the merits of it by the State Court in violation of the government's absolute right of removal. If it is meant the U.S. Court should have dismissed, the answer is that such would have required evidence and consideration—that is, *the exercise of jurisdiction.* To say that a Court had no jurisdiction of our action because that action was later found without merit and was dismissed, is in the words of Justice Jackson, to confuse. ". . . the question whether jurisdiction exists . . . with the question whether the complaint states a cause of action." *Montana-Dakota Utilities Co.* v. *Northwestern Public Service Commission,* S.Ct., 341 U.S. 246, 95 L.Ed. 912.

At any rate, since the U.S. removed the case, and *in the U.S. Court sought affirmative relief* as to the priority of its lien *and cross actioned for damages,* the question of jurisdiction became moot and the jurisdiction of the U.S. Court was conclusively established, as held in *Hood* v. *U.S.,* 256 F.2d 522.

C. Removal was proper under 28 U.S.C. 2410 since the cause involved the priority and applicability of the government's lien as to specific property. Removal jurisdiction under 2410 does not depend on the specific relief sought. Rather it rests on the existence of the traditional controversy in which private parties assert ownership which is superior to or may defeat the claimed lien of the government. It is the substance, rather than the form of the controversy, which brings it within the purview of the statute. See *Adler* v. *Nichols*, CCA 10th, 166 F.2d 674. In our case, the substance of the action was clearly within the intended purview of the statute, since it included the ownership and preservation of property on which the U.S. Government claimed a lien. It also involved the disputed priority of the government's lien.

CONCLUSION

After a long and complete trial on the merits in U.S. Court, with Petitioner Grubbs, General Electric Credit Corporation, The General Electric Company, the United States Government and several intervenors consenting to jurisdiction and actively participating in the trial in the U.S. Court, it would seem neither legally correct nor just, to require that it now all be done over in State Court. Such would go against our traditional policy that there should be an end to litigation and that parties should be bound by their actions. It would also go against the law as clearly expressed by this Honorable Court in many of its decisions. Finally, it would deprive Petitioner of his recovery which was both hard earned and justly obtained.

As said by Justice Holmes in *Hart* v. *B. F. Keith Vaudeville Exchange*, supra:

"The logic of the general rule as to jurisdiction is obvious, and the case should be decided upon its merits unless the want of jurisdiction is entirely clear."

For the reasons set out throughout this brief, Petitioner respectfully prays that the judgment of the Court of Appeals ordering remand of this case be reversed and the jurisdiction of the District Court be sustained.

Respectfully submitted,

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Three copies of this Brief were on this the ..... day of January, A.D., 1972 mailed to Honorable Hubert D. Johnson, for Johnson, McElroy, Cravens and Boone, 1900 Mercantile Dallas Building, Dallas, Texas -75201-, Attorneys for Respondent, by depositing same in the U.S. Post Office, with first class postage paid, and addressed to the above address.

.....
BILL J. CORNELIUS

Section 2. Jurisdiction of Courts

Section 2. [1]The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States; —between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

§ 2410. Actions affecting property on which United States has lien

(a) Under the conditions prescribed in this section and section 1444 of this title for the protection of the United States, the United States may be named a party in any civil action or suit in any district court, or in any State court having jurisdiction of the subject matter—

(1) *to quiet title to,*

(2) to foreclose a mortgage or other lien upon,

(3) to partition,

(4) to condemn, or

(5) *of interpleader or in the nature of interpleader with respect to, real or personal property on which the United States has or claims a mortgage or other lien.*

. . .

§ 1444. Foreclosure action against United States

Any action brought under section 2410 of this title against the United States in any State court may be removed by the United States to the district court of the United States for the district and division in which the action is pending. June 25, 1948, c. 646, 62 Stat. 938, amended May 24, 1949, c. 139, § 82, 63 Stat. 101.

§ 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action is brought.

(c) Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction. June 25, 1948, c. 646, 62 Stat. 937.

§ 1331. Federal question; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interests and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff. As amended July 25, 1958, Pub.L. 85–554, § 1, 72 Stat. 415.

§ 1332. Diversity of citizenship; amount in controversy; costs

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

(2) citizens of a State, and foreign states or citizens or subjects thereof; and

(3) citizens of different States and in which foreign states or citizens or subjects thereof are additional parties.

(b) Except when express provision therefor is otherwise made in a statute of the United States, where the plaintiff who files the case originally in the Federal courts

is finally adjudged to be entitled to recover less than the sum or value of $10,000, computed without regard to any setoff or counterclaim to which the defendant may be adjudged to be entitled, and exclusive of interest and costs, the district court may deny costs to the plaintiff and, in addition, may impose costs on the plaintiff.

(c) For the purposes of this section and section 1441 of this title, a corporation shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business: *Provided further,* That in any direct action against the insurer of a policy or contract of liability insurance, whether incorporated or unincorporated, to which action the insured is not joined as a party-defendant, such insurer shall be deemed a citizen of the State of which the insured is a citizen, as well as of any State by which the insurer has been incorporated and the State where it has its principal place of business.

(d) The word "States", as used in this section, includes the Territories, the District of Columbia, and the Commonwealth of Puerto Rico, June 25, 1948, c. 646, 62 Stat. 930; July 26, 1956, c. 740, 70 Stat. 658; July 25, 1958, Pub.L. 85-554, § 2, 72 Stat. 415; Aug. 14, 1964, Pub.L. 88–439, § 1, 78 Stat. 445.

§ 1. Trusts, etc., in restraint of trade illegal; exception of resale price agreements; penalty

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal: *Provided,* That nothing contained in sections 1-7 of this title shall render illegal, contracts or agreements prescribing minimum prices for the resale of a commodity which bears, or the label or container of

which bears, the trademark, brand, or name of the producer or distributor of such commodity and which is in free and open competition with commodities of the same general class produced or distributed by others, when contracts or agreements of that description are lawful as applied to intrastate transactions, under any statute, law, or public policy now or hereafter in effect in any State, Territory, or the District of Columbia in which such resale is to be made, or to which the commodity is to be transported for such resale, and the making of such contracts or agreements shall not be an unfair method of competition under section 45 of this title: *Provided further,* That the preceding proviso shall not make lawful any contract or agreement, providing for the establishment or maintenance of minimum resale prices on any commodity herein involved, between manufacturers, or between producers, or between wholesalers, or between brokers, or between factors, or between retailers, or between persons, firms, or corporations in competition with each other. Every person who shall make any contract or engage in any combination or conspiracy declared by sections 1-7 of this title to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding fifty thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court. July 2, 1890, c. 647, § 1, 26 Stat. 209; Aug. 17, 1937, c. 690, Title VIII, 50 Stat. 693; July 7, 1955, c. 281, 69 Stat. 282.

§ 15. Suits by persons injured; amount of recovery

Any person who shall be injured in his business or property by reason of anything forbidden in the antitrust laws *may sue therefor in any district court* of the United States in the district in which the defendant resides or is

found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee. Oct. 15, 1914, c. 323, § 4, 38 Stat. 731.

§ 1337. Commerce and anti-trust regulations

The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies. June 25, 1948, c. 646, 62 Stat. 931.

§ 1345. United States as plaintiff

Except as otherwise provided by Act of Congress, the district courts shall have original jurisdiction of all civil actions, suits or proceedings commenced by the United States, or by any agency or officer thereof expressly authorized to sue by Act of Congress June 25, 1948, c. 646, 62 Stat. 933.

those with a conscientious and scrupulous regard for such undertakings." *Baggett* v. *Bullitt, supra,* at 373–374.

Loyalty oaths do not have a very pleasant history in this country. Whereas they may be developed initially as a means of fostering power and confidence in government, there is a danger that they will swell "into an instrument of thought control and a means of enforcing complete political conformity." Asper, The Long and Unhappy History of Loyalty Testing in Maryland, 13 Am. J. Legal Hist. 97, 108 (1969). Within the limits of the Constitution it is, of course, for the legislators to weigh the utility of the oaths and their potential dangers and to strike a balance. But, as a people, we should always keep in mind the words of Mr. Justice Black, concurring in *Speiser* v. *Randall,* 357 U. S., at 532:

> "Loyalty oaths, as well as other contemporary 'security measures,' tend to stifle all forms of unorthodox or unpopular thinking or expression—the kind of thought and expression which has played such a vital and beneficial role in the history of this Nation. The result is a stultifying conformity which in the end may well turn out to be more destructive to our free society than foreign agents could ever hope to be. . . . I am certain that loyalty to the United States can never be secured by the endless proliferation of 'loyalty' oaths; loyalty must arise spontaneously from the hearts of people who love their country and respect their government."

Accordingly, I would affirm the decision of the District Court.

GRUBBS, DBA T. R. GRUBBS TIRE & APPLIANCE *v.* GENERAL ELECTRIC CREDIT CORP.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 71-257. Argued March 23, 1972—Decided April 18, 1972

Respondent, a New York corporation, brought suit for $66,000 on a promissory note against petitioner, a citizen of Texas, in a Texas state court, and petitioner filed a cross-action for $25,000 seeking damages for slander, conversion, and conspiracy in restraint of trade. A later cross-action included the United States, which held a judgment against petitioner, as a party defendant. The action was removed to the Federal District Court for trial of the issues, on petition of the United States. The District Court, without objection, considered all the issues and awarded petitioner a $20,000 judgment against respondent. The Court of Appeals, *sua sponte*, held that the District Court lacked jurisdiction and ordered the case returned to the state court. *Held:* Where after removal a case is tried on the merits without objection and the federal court enters a judgment, the issue on appeal is not whether the case was properly removed, but whether the District Court would have had original jurisdiction if the case had been filed in that court. Here there was diversity jurisdiction in the District Court if the action had been brought there originally. Pp. 702–706.

447 F. 2d 286, reversed and remanded.

REHNQUIST, J., delivered the opinion for a unanimous Court.

Bill J. Cornelius argued the cause for petitioner. With him on the brief was *J. R. Cornelius.*

Hubert D. Johnson argued the cause and filed a brief for respondent.

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Petitioner recovered a money judgment against respondent in the United States District Court for the

Eastern District of Texas, and respondent appealed to the United States Court of Appeals for the Fifth Circuit. That court held the District Court lacked jurisdiction of the case, and reversed the judgment with instructions that the case be remanded to the Texas state court whence it had been removed. This Court granted certiorari, 404 U. S. 983. We have concluded that, whether or not the case was properly removed, the District Court did have jurisdiction of the parties at the time it entered judgment. Under such circumstances the validity of the removal procedure followed may not be raised for the first time on appeal, and we accordingly reverse the judgment of the Court of Appeals.

In September 1964 respondent General Electric Credit Corp. (GECC) commenced a lawsuit against petitioner Grubbs by the filing of a petition in the Texas state trial court. The petition sought recovery upon a promissory note claimed to have been previously executed by petitioner to GECC in the principal sum of some $66,000. Two years later, petitioner Grubbs filed an amended answer and "cross-action," seeking damages from respondent and from the General Electric Co. (GE) by reason of alleged slander, conversion, and conspiracy in restraint of trade.[1] GE appeared in the state court in answer to petitioner's cross-action against it, and respondent likewise filed an answer.

The following year, petitioner filed a second amended answer and cross-actions, one of which included the United States as an added party defendant. The basis asserted by petitioner for naming the United States as a party was the fact that the latter held an out-

[1] The business relationship of the parties was as follows. Grubbs was a franchised dealer for the General Electric Co. General Electric Credit Corp. provided financing for customers of Grubbs who purchased General Electric products.

standing judgment against petitioner, as did several of his other creditors, and petitioner prayed the state court to determine priorities among the judgment liens. Responding to the gathering momentum of this long-dormant lawsuit, the United States then filed in the United States District Court for the Eastern District of Texas a petition for removal of the action to that court "for trial and determination upon the merits of all issues or claims therein, as is provided by Title 28, Section[s] 1444, 1441 (c) and 1446."

All of the parties treated the effect of the removal petition as placing before the District Court not only the claim by petitioner against the United States for adjudication of lien priorities, but also respondent's claim against petitioner on the promissory note and petitioner's claim for damages against respondent based on conspiracy to restrain trade and tortious interference with business relations.

At no time following the filing of the removal petition by the United States did respondent, by motion to remand or otherwise, object to the District Court's taking jurisdiction of the entire "action." In that court, the United States answered petitioner's cross-action and filed its own "cross-action" against respondent and GE, asserting that the latter two had maliciously interfered with the contractual relationship between petitioner and the United States, and seeking damages as a result of this alleged wrong.

The case was ultimately tried to the District Court without a jury. That court held against respondent on its promissory-note claim, held in favor of petitioner on his claim against respondent for tortious interference, and awarded $20,000 damages thereon, and dismissed the claims of petitioner and the United States against GE and the claim of the United States against respondent. The court further found that it was unable to

determine the priority of liens as between the various parties. Judgment was accordingly entered in favor of petitioner Grubbs and against respondent GECC in the amount of $20,000, and providing that the remaining parties take nothing by their actions.

GECC appealed to the Court of Appeals, which on its own motion questioned the jurisdiction of the District Court. After calling for supplemental briefs on the issue, the Court of Appeals decided that the only conceivable basis for jurisdiction of the action in the District Court was the removal by the United States purportedly in accordance with 28 U. S. C. § 1444. That court held, however, that petitioner's "interpleader" of the United States and other parties for a determination of priority of judgment liens was a spurious basis for joining the United States as a party defendant under 28 U. S. C. § 2410. Therefore, in the view of that court, the provisions of 28 U. S. C. § 1444, authorizing removal by the United States of an action brought under 28 U. S. C. § 2410, were not available to the Government. Concluding, thus, that the removal had not been authorized by statute, the Court of Appeals decided that there was no other basis for the District Court's jurisdiction of the action, and that the case should be remanded to the state court in which it had originated.

Longstanding decisions of this Court make clear, however, that where after removal a case is tried on the merits without objection and the federal court enters judgment, the issue in subsequent proceedings on appeal is not whether the case was properly removed, but whether the federal district court would have had original jurisdiction of the case had it been filed in that court. In *Baggs* v. *Martin*, 179 U. S. 206 (1900), a receiver appointed by a federal court was sued in state court and removed the action to the federal court that

appointed him. Following judgment on the merits, the receiver sought reversal of the judgment on the ground that the case was not properly removable from the state court. Since the federal court that had earlier appointed the receiver would have had original jurisdiction of an action against him, this Court held that he could not then object to the removal of the case when removal had come as a result of his own action.

Mackay v. *Uinta Development Co.*, 229 U. S. 173 (1913), dealt with an action that had been commenced in the Wyoming state court between two citizens of different States. Plaintiff's claim was for less than the jurisdictional amount, but defendant's counterclaim exceeded the jurisdictional amount. The case was removed to federal court without objection by either party, and there tried on the merits. When the losing party later sought to upset a judgment against him on the merits because of failure to comply with the removal statutes, this Court rejected the claim, saying:

> "[R]egardless of the manner in which the case was brought or how the attendance of the parties in the United States court was secured, there was presented to the Circuit Court a controversy between citizens of different States in which the amount claimed by one non-resident was more than $2,000, exclusive of interest and costs. As the court had jurisdiction of the subject-matter the parties could have been realigned by making Mackay plaintiff and the Development Company defendant, if that had been found proper. But if there was any irregularity in docketing the case or in the order of the pleadings such an irregularity was waivable and neither it nor the method of getting the parties before the court operated to deprive it of the power to determine the cause." *Id.*, at 176–177.

Applying this doctrine to the case before us, we note that the parties concede in their briefs that petitioner is a citizen of Texas, and that respondent and GE are citizens of New York for purposes of diversity jurisdiction. This concession is supported by excerpts from discovery proceedings included in the record. Respondent GECC in its pleading initiating the action in the state trial court sought recovery of $60,000 from petitioner Grubbs; Grubbs in his state court cross-action sought recovery of $25,000 from respondent. There was thus diversity jurisdiction in the Federal District Court under 28 U. S. C. § 1332 if the action had been brought in that court originally.

In *American Fire & Casualty Co.* v. *Finn*, 341 U. S. 6 (1951), this Court held that the rule enunciated in *Baggs* v. *Martin*, *supra*, had no application to a case where at the time of judgment citizens of the same State were on both sides of the litigation. There the state court plaintiff had joined two insurance carriers and their local agent in an action to recover for a fire loss. *Finn* held that the dispute between the plaintiff and the insurance carriers was not a "separate and independent claim or cause of action" under 28 U. S. C. § 1441 (c), and that therefore removal of the action to a federal court by one of the carriers was unauthorized by statute. Since complete diversity did not obtain even as of the date of judgment, and since there was no other basis for federal jurisdiction, this Court reversed the judgment of the Court of Appeals which had held the case properly removable.

In this case there were, of course, parties other than petitioner, respondent, and GE, both at the time of removal and at the time of judgment. Indeed, the case might be said to abound in parties. Petitioner in his "cross-action" against the United States for determination of lien priorities asserted a claim against an addi-

tional party which had virtually no relationship to the claim or relief sought by petitioner against respondent, or that sought by respondent against petitioner.[2]

While, of course, Texas is free to establish such rules of practice for her own courts as she chooses, the removal statutes and decisions of this Court are intended to have uniform nationwide application. "Hence the Act of Congress must be construed as setting up its own criteria, irrespective of local law, for determining in what instances suits are to be removed from the state to the federal courts." *Shamrock Oil Corp.* v. *Sheets*, 313 U. S. 100, 104 (1941). The rule enunciated in *Baggs* v. *Martin*, *supra*, *Mackay* v. *Uinta Development Co.*, *supra*, and *American Fire & Casualty Co.* v. *Finn*, *supra*, likewise lays down a doctrine that is intended to have uniform nationwide application. However many parties, cross-claims, or indeed lawsuits Texas practice may permit to be joined in one "case" or one "action," the requirement of *Finn* was applied in the context of a two-sided lawsuit. We conclude that the requirement that jurisdiction exist at the time of judgment, stated in that case, is satisfied here where the District Court had jurisdiction to render judgment as between the plaintiff-counter-defendant, the defendant-counterclaimant, and the additional counter-defendant. It would serve no

[2] Petitioner's state court cross-action against the United States was by its terms based on "Rule 22 of the U. S. Rules of Civil Procedure." However, under Fed. Rule Civ. Proc. 22, a defendant seeking interpleader must frame his pleading either as a cross-claim seeking relief against a co-party already in the lawsuit, or as a counterclaim seeking relief against the plaintiff. If the defendant states a claim seeking relief against such a co-party or plaintiff-counter-defendant, he may seek to bring in additional parties under the joinder provisions of Rule 20. But the interpleader provided by Rule 22 must have some nexus with a party already in the case. As noted above, petitioner's interpleader claim sought no relief against any other party in the action.

purpose to require that in order to sustain jurisdiction in such a case, the prevailing party in the original two-sided litigation must go further and show that there was likewise jurisdiction as to virtually unrelated claims that the state court had permitted to be joined in the same lawsuit.

Finding that the necessary jurisdiction did exist, we reverse the judgment of the Court of Appeals and remand the case to that court for consideration of respondent's appeal on the merits.

Reversed and remanded.